SUPREME COURT OF THE UNITED STATES.

No. 80.

ELIZA J. CARRINGTON, APPELLANT,

VERSUS

JOSHUA YEO, ADMINISTRATOR DE BONIS NON OF JESSE McKAY, DECEASED.

ON APPEAL FROM CIRCUIT COURT U. S. FOR THE DISTRICT OF OHIO.

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Pleas begun and held at the court-house, in the town of Columbus, on Monday, the eleventh day of July, in the year of our Lord one thousand eight hundred and thirty-one, and of the American independence the fifty-sixth, before the honorables John McLean and John W. Campbell, judges of the circuit court of the United States within and for the seventh circuit and district of Ohio.

JOSHUA YEO, administrator de bonis non of JESSE MCKAY, deceased, *vs.* ELIZA J. CARRINGTON. } *Chancery.*

Be it remembered that, heretofore, to wit, on the sixth day of January, in the year of our Lord one thousand eight hundred and twenty-three, and of the American independence the forty-seventh, came Eliza J. Carrington, by Thomas Scott, her attorney, and filed in the office of the clerk of the United States', seventh circuit court within and for the district of Ohio, the following transcript of the proceedings of a cause lately pending before the honorable the judges of the court of common pleas within and for the county of Ross, and State of Ohio; which said transcript is in the words and figures following, to wit:

Transcript. Pleas held at the court-house in Chillicothe, for the county of Ross, before the honorable John Thompson, President, and Isaac Cook, James Armstrong, and Joseph Gardiner, esquires, associate judges, of the court of common pleas for the county aforesaid, on the twelfth day of October, in the year of our Lord one thousand eight hundred and twenty-two, and of this State the twentieth.

MCKAY, *vs.* CARRINGTON.

Be it remembered that, heretofore, to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and twenty-one, Jesse McKay, by Scott and Grimke, his counsel, filed in the clerk's office of said court, his certain petition in chancery against Elizabeth J. Carrington, which said petition is in the words and figures following, to wit:

Bill. To the honorable the Judges of the Court of Common Pleas of the county of Ross, in chancery sitting:

Humbly complaining, your orator, Jesse McKay, of the county aforesaid, showeth unto your honors that, on the thirteenth day of December, in the year one thousand eight hundred and seventeen, Eliza J. Carrington, of the city of Richmond, and State of Virginia, together with your orator, entered into the following agreement: Elizabeth J. Carrington agrees to sell and convey to the said Jesse McKay two tracts of land lying in the State of Ohio; the one consisting of thirteen hundred and sixty-seven acres, lying on the waters of the Little Miami river, being survey No. 986 and 2,433; the others, consisting of one thousand acres, lying also on the waters of the Little Miami river, being survey No. 1,367; which said tracts of land were sold under a decree of

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the circuit court of the United States for the district of Ohio; at which sale the said Elizabeth J. Carrington became the purchaser. The said decree was rendered in a suit brought by the said Elizabeth J. Carrington, administratrix of Edward Carrington, deceased, against Samuel G. Martin; and the said Jesse McKay agrees to pay for the land the sum of ten thousand dollars one hundred and one, at the following periods, to wit: Three thousand dollars immediately; three thousand five hundred and fifty dollars and fifty cents on the first day of January, one thousand eight hundred and nineteen; and the residue on the first day of January, in the year one thousand eight hundred and twenty. If he fails in making either payment, the said Elizabeth J. Carrington to be at liberty to sell the said land in like manner as if this contract had not been made, and to retain the money due to her, and the expenses of sale, out of the proceeds thereof, and to pay the residue of the money to the said Jesse McKay. But it is understood that the said Elizabeth J. Carrington is to proceed, under this agreement, to obtain a decree for the sale of the land herein before mentioned, in like manner as if she had received a mortgage to secure the payment of the purchase money: to which agreement your orator, for greater certainty, refers, and which he prays may be taken and considered as a part of this his bill. Your orator would further represent unto your honors, that, on the twelfth day of December, eighteen hundred and seventeen, he executed to the said Elizabeth J. Carrington his bond for the payment of two thousand on or before the first day of February, in the year eighteen hundred and eighteen, this being the first instalment, which payment has been faithfully made, and was accepted by the said Elizabeth J., as will certainly appear by reference to the said bond, and to the endorsements and *and* receipts on the back of it; and, in addition to this last mentioned sum, your orator has also paid to the said Elizabeth J. the sum of one thousand dollars. Your orator would further represent unto your honors, in consequence of the silence of the original agreements as to the delivery of possession of the aforesaid premises; your orator procured from the said Elizabeth J. an authority in writing, empowering him to take possession immediately, which authority has been void and nugatory, as the land is occupied by persons who claim to hold under a higher and paramount authority; and, therefore, refuse to deliver possession to your orator. And thus your orator, in consequence of his inability to get into possession of the land peaceably and by entry, and still more in consequence of his inability to maintain and assert his right at law, has been able to derive no benefit or advantage from the aforesaid original agreement, or from the subsequent authority in writing. Your orator would further represent unto your honors, that Edward Carrington, deceased, of whom the said Elizabeth J. is administratrix, some time previous to the year eighteen hundred and seventeen, and before the agreement between your orator and the said administratrix, bargained and sold to one Samuel G. Martin the whole of the aforesaid premises, including in the above original agreement; that the *the* said Edward died intestate; that the said Elizabeth

J. procured a decree in the circuit court of the State of Ohio for the sale of the said land, to satisfy the payment of the purchase money then due from the said Samuel G. Martin; and the marshal of said State or district executed to her a deed for the said land, she being the highest bidder. Your orator would further represent unto your honors that the said Edward Carrington died, leaving several heirs to whom the fee and legal estate in the said land has descended; and that thus the said Elizabeth J. was unauthorized to sell to your orator, and is unable to make a conveyance to him of the legal estate, in violation of the solemn agreement entered into with your orator as aforesaid, and to the irreparable injury of your orator's interest; that the said Elizabeth has pursued no measures to compel a conveyance of the legal title from the said heirs of Edward Carrington, deceased; and that there is no hope or reasonable prospect that she will ever be able to procure a conveyance. Your orator would further represent unto your honors, that, by the direction or express approbation of the said Elizabeth J., he has defrayed for her, out of his own purse, a variety of expenses incident to suits which she has commenced in the circuit court of the district of Ohio for the purpose of perfecting the legal title to the land which she sold to your orator, to wit, to the amount of three hundred and *and* twenty-four dollars; the receipts and vouchers for which your orator is ready to produce to your honors, and which he prays may be taken and considered as a part of this his bill. Your orator prays that the said Elizabeth J. may be decreed to reimburse him the last sum, in addition to the three thousand dollars, with interest, which he has paid on account of the legal title. That the equitable interest which the said Elizabeth possessess in the said land may be charged with the payment of it, your orator prays that the said Elizabeth may be made a defendant to this bill; and that she may, upon her corporal oath, according to the best of her knowledge, information, and belief, true, full, direct and perfect answer, make to all and singular the charges and matter aforesaid, and that as fully in every respect as if the same were again herein repeated and interrogated, and, more especially, that she set forth and discover, according to the best of her knowledge, whether she did not enter into the agreement above related, for the conveyance to your orator of two tracts of land in the State of Ohio; whether your orator did not execute his first bond to her for the payment of two thousand dollars, on or before the first day of February, eighteen hundred and eighteen; and whether she has not accepted the payment of the said bond; whether she did not sell the land to your orator at a period when it was in the possession of persons who claim under Samuel G. Martin, the vendee of her intestate, and, if not in possession of such persons, that she may answer and say who were the persons who occupied the land, and under whom they claimed; whether she did not execute to your orator memorandum, in writing, purporting to be an authority to him to take possession of the said land, and whether your orator has been able to avail himself of that power; whether Edward

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Carrington, her intestate, had not, some time previous to his death, sold the said land to one Samuel G. Martin; whether, as administratrix of the said Edward, she did not procure a decree in the circuit court of the State of Ohio, for the of the said land, and whether she did not obtain a deed for the same from the marshal of that district; whether Edward Carrington did not leave heirs, and who they are, and whether she has been able to procure a conveyance from the said heirs, or pursued any means to enforce a conveyance. May it please your honors, the premises considered, to decree that the contract aforesaid between your orator and the said Elizabeth J. may be rescinded, and declared to be of no binding force and obligation; that the money, with interest, which your orator has already paid, be decreed to be reimbursed to him, and that the equitable interest of the said Elizabeth J. in the said land, be charged with the payment of it; that the obligations of your orator, which the said Elizabeth J. now holds for the payment of the residue of the purchase money, to be delivered up to be cancelled; and, until delivered up, that she prohibited from negotiating, or in any way parting with them, and that your orator may have such other and further relief in the premises as the nature of his case may require, and to your honors may seem mete, may it please your honors to grant unto your orator the most gracious writ of subpœna of the people of the State of Ohio, issuing out of, and under the seal of the honorable court, to be directed to the said Elizabeth, commanding her at a certain day, and under a certain pain therein specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises aforesaid; and to stand, to perform, and abide such order, directions, and decree therein, as to your honors shall seem mete.

SCOTT & GRIMKE.

And afterwards, to wit, at the April term, in the year of our Lord one thousand eight hundred and twenty-one, on motion of the complainant by his counsel, and it appearing to the satisfaction of the court here that the defendant is not a resident of this State, it is ordered that she appear and answer the bill of the complainant on or before the first day of our next term, or the same will be taken as confessed, and the matter thereof decreed accordingly: and it is further ordered that this order be published in the Supporter and Scioto Gazette, a paper printed in Chillicothe, for nine weeks successively previous to the next term of this court. And, afterwards, to wit, at November term, 1821, order of publication revised and continued. And, afterwards, to wit, at June term, in the year of our Lord one thousand eight hundred and *and* twenty-two, proof of publication filed, and rule on the defendant to answer in sixty days, or decree pro confesso. And now, at this day, to wit, on the day, in the year, and at the place first herein aforesaid mentioned, on motion, ordered that the name of Frederick Grimke be substituted as attorney of record for the complainant; and, on motion of Thomas Scott, the attorney for the respondent, it is further ordered that this cause be certified to the seventh circuit court of the United States for

Order of publication.

the district of Ohio; and, by consent of the parties, the petition and bond required by the act of Congress is waived in this case.

COST BILL.

Printer's bill, - - - - -	$5 00
Sheriff " - - - - -	1 31
Clerk " - - - - -	2 20
Transcript and seal, - - - -	2 62

THE STATE OF OHIO, *Ross County, sct.*

I, Humphrey Fullerton, clerk of the court of common pleas for the county aforesaid, do hereby certify that the foregoing is a true copy of the original bill filed in said court, and of the proceedings had thereon.

In testimony whereof, I have hereunto set my name, and affixed the seal of said court, at Chillicothe, this 16th day of December, A. D. 1822, and in the twenty-first year of this State.

[L. S.] HUMPHREY FULLERTON.

And, afterwards, to wit, at the September term of said court, in the year of our Lord one thousand eight hundred and twenty-three, the said Eliza J. Carrington filed in court here the following answer, to wit:

Answer. The answer, in chancery, of Elizabeth J. Carrington to the petition, or bill in chancery, exhibited against her by Jesse McKay, and now depending in the United States' court for the seventh circuit and district of Ohio:

This respondent saving to herself all just exceptions to the complainant's bill, for answer thereto, says, that she admits the contract between the complainant and herself for the sale of the land in the bill mentioned, which she believes to be truly stated in the bill, but, for greater certainty, prays that the copy, which she presumes is still in possession of the plaintiff or his attorney, may be laid before this honorable court. This respondent says that all the facts stated in the contract respecting the land, are, to the best of her knowledge, strictly true. She further says that the plaintiff, who, as she understands, was then, and still is, a citizen and resident of the State of Ohio, appeared, at the time of the contract, to be perfectly acquainted with the circumstances of the property; and, being possessed of that knowledge, came to Richmond for the purpose of making the purchase. No inducement of any kind were held out to him, nor were any representations made to him by this respondent: he relied upon his own knowledge and purchased on it. A part of this knowledge was, that the land was in possession of Samuel G. Martin and others, who entered into possession under a contract made by Colonel Edward Carrington in his life time. It was on this contract that the suit was instituted, in which the decree was made, which is referred to in the contract between the plaintiff and this respondent. The claims of the persons in possession, whatever they may be, were as well known to the plaintiff as to this respondent. Those claims,

as this respondent is informed and believes, have been decided against those who hold still the possession of the land; but, for this, she refers to the proceedings, which she presumes has taken place thereon in court. This respondent admits the payment of the bond, and of one thousand dollars in the bill mentioned, which sums have been paid to and received by the heirs and distributees of Colonel Carrington; but she does not admit any further payment, nor did she ever request or authorize the plaintiff to make advances for her. She, however, willing to allow what may in justice be claimed in the final settlement. This respondent has not proceeded to coerce the payment of that part of the purchase money which remains unpaid; and admits that if there were any conflicting hostile title which could be sustained, the plaintiff would be entitled to the interposition and aid of a court of equity; but humbly contends that there is no such conflicting hostile title. That possession is withheld wrongfully by persons whose possession and claims were, as she believes, known to the plaintiff at the time of the purchase, and that the means of obtaining that possession are unquestionable. The heirs of Colonel Carrington, who have received a part of the purchase money, will, as this respondent is entirely satisfied, bring an ejectment for the property, if the use of their names be necessary. And this respondent humbly contends that there being no defect in the title, and the delay in giving possession being not the fault of this defendant, but growing out of circumstances known to the purchaser at the time of the purchase, can furnish no ground for setting aside the contract.

This defendant denies all fraud and combination, and prays to be hence dismissed with her costs, &c.; and she will ever pray, &c. &c.

ELIZA J. CARRINGTON.

CITY OF RICHMOND, *to wit:*

Elizabeth J. Carrington appeared before me, Thomas Brockenbrough, a magistrate for said city, and made oath on the Holy Evangelist that the allegations of the foregoing answer, so far as they are made on her own knowledge, are true; and, so far as they are made on the knowledge of others, she believes them to be true.

Given under my hand at the city of Richmond aforesaid, this 14th day of July, A. D. one thousand eight hundred and twenty-three.

THO. BROCKENBROUGH.

Continuance.

And, thereupon, this cause was continued. And afterwards, to wit, on the twenty-second day of November, eighteen hundred and twenty-three, the complainant, by his attorney aforesaid, filed in the office of the clerk of said court here, the following replication, to wit:

Replication. Circuit Court of the United States, 7th circuit, Ohio District.

JESSE McKAY,
vs.
ELIZA J. CARRINGTON. } *In Chancery.*

The replication of Jesse McKay, complainant, to the answer of the respondent Eliza J. This repliant, saving and reserving to himself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the said answer of the respondent, for replication thereunto, saith, that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law, to be answered unto by the said respondent; and that the answer is uncertain, evasive, and insufficient. Without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things, this repliant is ready to aver, maintain, and prove, as this honorable court shall direct.

And humbly prays, as in and by his bill he has already prayed, &c.

B. G. LEONARD,
Counsel for Complainant.

Consent. I consent, if there is a default, it may be taken of, and this replication, as if filed in due season.

THOMAS SCOTT,
Counsel for Def't.

Consent as to replication. It is agreed that this replication shall be held to apply to all the answers amended, or otherwise, in this case.

THOMAS SCOTT,
Attorney for Def't.

1st *July*, 1830. B. G. LEONARD,
Attorney for Pl'ff.

And thereupon, this cause was regularly continued from term to term, until the January term of said court, eighteen hundred and twenty-five, at which term the following proceedings were had, to wit: leave is granted the defendant to amend her answer. The amendment to the defendant's answer filed, and the oath to the same waived.

Leave given to amend answer.

Which answer is in the words and figures following, to wit:

Amended answer.

7th Circuit Court United States, District of Ohio.

ELIZA J. CARRINGTON,
ad's.
JESSE McKAY. } *In Chancery.*

And the said Eliza J. Carrington, defendant, by leave of the court for that purpose obtained, amends her answer, by charging as follows: That, at the time of entering into the contract with the complainant Jesse, he, the said Jesse, had correct information of the nature of the title which this defendant held to said land.

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This defendant on discovering that Samuel G. Martin, and those claiming under him, would not yield possession to the said Jesse under his contract with this defendant, notwithstanding the right of the said Samuel, and those claiming under him, had been extinguished by the sale and conveyance made to her by the marshal of the district aforesaid, pursuant to the decree of this court, immediately caused ejectment to be prosecuted against the said Samuel G. Martin, and those claiming under him, and obtained judgment thereon in her favor; on which judgments, writs of habere facias possessionem have issued, and the said Samuel G. Martin, and those claiming under him, have been turned out of possession, as from the records and proceeding of said ejectment remaining in this honorable court, reference being thereto had, will appear; and to which she prays reference as a part of this her amended answer. This defendant further charges that, immediately after entering into the contract with the said Jesse, he, the said Jesse, obtained possession of parts of the land so as aforesaid contracted to be sold and conveyed to him, and has ever since been in the receipts and the rents and profits thereof. She further charges that, since recovering possession of the residue of said lands thus contracted to be conveyed as herein above stated, she, by her attorney, tendered the possession thereof to the said Jesse, and offered to put him in quiet possession thereof; which he, the said Jesse, refused to accept. She further charges that the heirs of her deceased husband, Colonel Edward Carrington, were numerous, and resided in various distant parts of the United States, so that she was compelled to expend considerable sums of money and labor before she was enabled to ascertain all their names and places of residence, in order to make them parties to a bill in equity, and obtain from them a decree vesting in her a complete legal title to the lands contracted to be sold and conveyed to the said Jesse. That, so soon as she had thus ascertained the names and places of residence of the said heirs, she caused a bill in equity to be filed against them in the court of common pleas of Clinton county, in this State, in which county the said lands are situated; and such proceedings were had thereon, that, at the last August term of said court, the said cause came on to be tried, and it was heard, and a final decree pronounced thereon in favor of this defendant against the heirs of the said Edward Carrington; by virtue of which proceedings and decree, this defendant is advised, and so charges the fact to be, that she is invested with a complete legal as well as the equitable title to all the lands contracted to be conveyed to the complainant Jesse, as in his bill of complaint is set forth, as from a duly authenticated copy of said proceedings and decree herewith filed, marked A, reference being thereto had, will more fully and at large appear; and to which, also, she prays reference as a part of her amended answer. This defendant is now ready and willing to convey the lands contracted to be conveyed to the said Jesse, on the receipt of the purchase money from him. As, therefore, she has been guilty of no fraud, but has in all things acted in good faith towards the said Jesse, she prays that his bill may be

dismissed, and that she may be permitted to go hence, without day, and receive her costs therein wrongfully expended.

ELIZA J. CARRINGTON,
By T. SCOTT, *her Attorney, &c.*

Exhibit referred to in answer.

(Exhibit A, referred to in the aforegoing answer, viz.)

Pleas at Wilmington, before the honorable John Collet, esquire, President, and his Associates, Judges of our court of Common Pleas for the county of Clinton, in the State of Ohio, on the second Monday of November, in the year of our Lord one thousand eight hundred and twenty-three.

ELIZA J. CARRINGTON, Complainant,
vs.
THE CO-HEIRS OF EDWARD CARRINGTON, dec'd. } *In Chancery.*

To wit: Henry Carrington, Walter Coles, and Lettice his wife, and Robert Carrington, which said Henry and Lettice, and Robert, are children and devisees of Paul Carrington, deceased; Mary Watkins, George Carrington, Richard Carrington, John Carrington, and Littleberry Carrington, and Elizabeth Griffin Carrington his wife, which said George, Richard, John, and Elizabeth, are the children and co-heirs of Mayo Carrington; Francis Walton, James Pitman, and Henningham his wife, which said Francis and Henningham are the children and co-heirs of Nathaniel Carrington, deceased; John Belt, and Elizabeth his wife, Alexander Carrington, Benjamin Watkins, and Maria his wife, Albert Carrington, Colin Carrington, and Wilson Carrington, the children and co-heirs of Codrington Carrington, deceased; and John Preston, and Elizabeth Ann his wife, which said Codrington Carrington and Elizabeth Ann Preston were the children and co-hiers of George Carrington, deceased; and Benjamin Carrington, Paul Carrington, William Carrington, Joseph Carrington, Littleberry Carrington, and George Carrington, by his guardian, and Addison Harrison, and Theodosia his wife, which said George and Theodosia are the children and co-heirs of George Carrington, deceased, who was the eldest son of Joseph Carrington, deceased, and which said Benjamin, Paul, William, Joseph, and Littleberry, are the children, and with the said George and Theodosia his grand children, are the co-heirs of Joseph Carrington, deceased; and George Benard, Ann Benard, Willes Willis, and Elizabeth his wife, Charles Coupland, and Henningham his wife, Douglass Merriwether, and Judith his wife, which said George, Ann, Elizabeth, Henningham, and Judith, are the children and co-heirs of Henningham Benard, deceased, and are also the co-heirs of said Edward Carrington, deceased, defendants.

Be it remembered, that, at the term of November aforesaid, before the judges aforesaid of our court of common pleas here at Wilmington, Eliza J. Carrington, by Thomas Scott, esquire, her solicitor, proferred to our said court of common pleas her petition in chancery against the co-heirs of Edward Carrington, deceased. in the words following, to wit:

Petition.

To the honorable the Judges of the Circuit Court of Common Pleas of the county of Clinton, sitting in Chancery:

Humbly complaining, showeth unto your honors, your oratrix Elizabeth J. Carrington, that the late Colonel Edward Carrington, was in his life time seized and possessed of two tracts of land lying in the now county of Clinton, in the State of Ohio, the one consisting of thirteen hundred and sixty-seven acres lying on the waters of the Little Miami river, survey number 986 and 2,433; the other consisting of one thousand acres lying also on the waters of the Little Miami river, being survey number 1,367; and, being so seized and possessed of said tracts of land, he sold the same in his life time to a certain Samuel G. Martin, and took security on the said land for the payment of the purchase money. Before the same was paid, the said Colonel Edward Carrington departed this life intestate, and without issue; and administration on his estate being granted to your oratrix, the heirs of the said Edward Carrington, deceased, were Paul Carrington, Hannah Cabell, Mary Watkins, and Henningham Benard, brother and sisters who survived him, and the heirs of Mayo Carrington, of Nathaniel Carrington, of George Carrington, and of Joseph Carrington, brothers of the said Edward Carrington, who died in his life time. The said Paul Carrington has since departed this life, having first made his last will in writing, now of record of the county court of Charlotte, in the commonwealth of Virginia, in which he devised his interest in the estate of his deceased brother Edward, to his son Henry, his daughter Lettice, now the wife of Walter Coles, and to his son Robert. The said Hannah Cabell is now dead, but, in her life time, she executed to your oratrix a conveyance of all her interest in the estate of her deceased brother Edward, which is recorded in the court of hustings of the city of Richmond; and to attested copies of the said conveyance and will, your oratrix refers as part of this her bill. The said Mary Watkins is now alive; the said Mayo Carrington left three sons and one daughter, who are now living, to wit, George Carrington, Richard Carrington, John Carrington, and Elizabeth Griffin, now the wife of Littleberry Carrington. The said Nathaniel Carrington left two daughters, Frances, the widow of Thomas Walton, deceased, and Henningham, the wife of James Pitman. The said George Carrington left two children, who was his heirs, to wit, Elizabeth Ann, the wife of John Preston, and Codrington Carrington, who is since dead, leaving six children who are his co-heirs, to wit, Elizabeth, the wife of John Belt, Maria, the wife of Benjamin Watkins, Alexander Carrington, Albert Carrington, Colin Carrington, and Wilson Carrington. The said Joseph Carrington left seven children who were his co-heirs, to wit, George, Benjamin, Paul, William, Joseph, Littleberry, and Mary Ann, the wife Codrington Carrington, who is also dead. George, the eldest, is dead, leaving two children who are his co-heirs, to wit, one son named George, and one daughter named Theodosia, who married Addison Harrison. Henningham Benard is also dead, leaving five children her co-heirs, to wit, George, Ann, Elizabeth,

the wife of Willis Wills, Henningham, the wife of Charles Coupland, and Judith, the wife of Douglass Meriwither. Your oratrix further states, that the said Samuel G. Martin having failed to comply with his contract, and pay the purchase money for the land sold to him by the said Edward Carrington, your oratrix, as administratrix of the said Edward Carrington, instituted a suit against him in the court of the United States for the seventh circuit and district of Ohio; in which a decree was pronounced, directing the said land to be sold on certain terms in the said decree mentioned: under this decree the lands were sold, and your oratrix became the purchaser, all which will more fully appear by the records of the said court, to which your oratrix refers for greater certainty. Your oratrix further states that the heirs of the said Edward Carrington, deceased, not having been parties to this said decree, your oratrix is advised that her title to the said land will not be complete until a conveyance from them shall be obtained: this, they are generally willing to make, having received their several shares of the purchase money, but they are so disposed, residing in different States, some of them married women and some infants, that your oratrix is advised to apply to this worshipful court for its aid: to the end, therefore, that the co-heirs of the said Edward Carrington, to wit, Henry Carrington, Walter Coles, and Lettice his wife, and Robert Carrington, which said Henry, Lettice, and Robert, are children and devisees of Paul Carrington, deceased; Mary Watkins, George Carrington, Richard Carrington, John Carrington, and Littleberry Carrington, and Elizabeth Griffin Carrington his wife, which said George, Richard, John, and Elizabeth, are the children and co-heirs of Mayo Carrington; Francis Walton, James Pitman, and Hneningham his wife, which said Francis and Henningham are the children and co-heirs of Nathaniel Carrington, deceased; the said John Belt, and Elizabeth his wife, Alexander Carrington, Benjamin Watkins, and Maria his wife, Albert Carrington Colin Carrington, and William Carrington, are the children and co-heirs of Codrington Carrington, deceased; and John Preston, and Elizabeth Ann his wife, which said Codrington Carrington and Elizabeth Ann Preston were the children and co heirs of George Carrington, deceased; and Benjamin Carrington, Paul Carrington, William Carrington, Joseph Carrington, Littleberry Carrington, and George Carrington, by his guardian, and Addison Harrison, and Theodosia his wife, which said George and Theodosia, are the children and co-heirs of George Carrington, deceased, who was the eldest son of Joseph Carrington, deceased, and which said Benjamin, Paul, William, Joseph, Littleberry, are the children, and, with the said George and Theodosia, his grand children, are the co-heirs of Joseph Carrington, deceased; and the said George Benard, Ann Benard, Willis Wills, and Elizabeth his wife, Charles Coupland, and Henningham his wife, and Douglass Meriwether, and Judith his wife, which said George, Ann, and Elizabeth, Henningham, and Judith, are the children and co-heirs of Henningham Benard, deceased, and are also the co heirs of Colonel Edward Carrington, deceased; may be made defendants hereto, and may on oath true answer

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nake to the premises, and that they may be decreed to convey the and to your oratrix which was sold under the *the* decree herein-efore mentioned of the court of the United States for the seventh ircuit and district of Ohio; and, that your oratrix may have such elief as is equitable, may it please your honors, &c.

ELIZA J. CARRINGTON.

Thomas Jefferson, President of the United States of America, to to all to whom these present shall come, greeting: Patent.

Know ye, that, in consideration of military services peformed by Edward Carrington, (a lieutenant colonel for seven years,) and Samuel Hogg, (a captain for three years,) to the United in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the tenth day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia or continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto;" and another act of the said Congress, passed on the ninth day of June, in the year 1794, amendatory of the said act, there is granted by the said United States, unto Edward Carrington, a certain tract of land containing one thousand three hundred and sixty-seven acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, as by survey bearing date the seventeenth day of June, in the year one thousand seven hundred and ninety-four, and bounded and described as follows, to wit: Surveyed for Edward Carrington one thousand and three hundred and sixty-seven acres of land on a part of two military warrants; on part of number 1792 for seven thousand acres in favor of the said Edward Carrington; and on part of number 73 for four thousand acres in favor of the said Samuel Hogg: We assign the same to the said Edward Carrington on the waters of the Little Miami, beginning at a hickory and two dogwoods; north corner to Nathaniel Anderson's survey No. 961; west corner to said Anderson's survey No. 730; south corner to Theodrick Bland's survey No. 885, running with Bland's line north forty-five degrees; west five hundred and thirty-four poles, crossing a creek at thirty, and one at four hundred and eighty poles, to two honey locusts and three elms; west corner to Bland's; thence south forty-nine degrees; west four hundred and one poles, crossing a creek at forty, and one at three hundred and eighty poles, to a sugar tree, white oak, and ironwood, on the bank of the creek; thence south forty-five degrees; east five hundred and sixty poles, to three small sugar trees; west corner to Anderson's; thence with his line north forty five degrees, east four hundred poles to the beginning with the appurtenances; to have and to hold the said tract of land, with the appurtenances, unto the said Edward Carrington, and his heirs and assigns, for ever.

In witness whereof, the said Thomas Jefferson, President of the United States of America, hath caused the seal of the said United States to be hereunto affixed, and signed the same with his hand t the city of Washington, the eleventh day of December, in the

year of our Lord 1802, and of the independence of the United States of America the twenty-seventh.

[L. S.] THO: JEFFERSON.

By the President:

JAMES MADISON, *Secretary of State.*

Patent. Thomas Jefferson, President of the United States of America, to all whom these presents shall come, greeting:

Know ye, that, in consideration of military services performed by Richard Jenkins, (a sergeant for three years,) Robert Doyle, Daniel Bunn, and Harrison Bearman, (all soldiers of the late war,) Aaron Ball, and Robert Angel, both soldiers for three years to the United States in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the tenth day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line in continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto;" and another act of the said Congress, passed on the ninth day of June, in the year 1794, amendatory of the said act, there is granted by the said United States unto Edward Carrington, a certain tract of land containing one thousand acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, as by survey bearing date the twenty-seventh day of June, in the year one thousand seven hundred and ninety-six, and bounded and deseribed as follows, to wit: Surveyed for Edward Carrington one thousand acres of land on six military warrants, to wit, on number 1,815 for two hundred acres in favor of the said Richard Jenkins, who assigned the same to the said Edward Carrington; on number 1,641 for two hundred acres in favor of the said Robert Doyle, who assigned the same to William Russell, who assigned the same to the said Edward Carrington; on number 1,644 for two hundred acres in favor of the said Daniel Bunn, who assigned the same to William Russell, who assigned the same to the said Edward Carrington; on number 1,658 for two hundred acres in favor of the said Harrison Bearman, who assigned the same to William Russell, who assigned the same to the said Edward Carrington; on number 1,583 for one hundred acres in favor of the said Aaron Ball, who assigned the same to the said Edward Carrington; and on number 645 for one hundred acres in favor of the said Robert Agel, who assigned the same to the said Edward Carrington, on the waters of the Little Miami, beginning at four sugar trees; west corner to Andrew Mead's survey number 2,388; and south corner to Archibald Johnston's survey No. 2,386, running with Johnston's line north forty-five degrees, west four hundred poles, to a sugar tree, elm, and beach, in Johnston's line; thence south forty-five degrees, west four hundred poles, to a hickory, ash, and walnut; thence *thence* south forty-five degrees, east four hundred poles, crossing a branch at eighty, and one at two hundred and sixty poles, to an elm, beach, and sugar tree; thence north forty-five degrees, east four hundred poles, to the beginning, with the

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appurtenances, to have and to hold the said tract of land, with the appurtenances, unto the said Edward Carrington, and his heirs and assigns, for ever.

In witness whereof, the said Thomas Jefferson, President of the United States of America, hath caused the seal of the United States to be hereunto affixed, and signed the same with his hand at the city of Washington, the eleventh day of December, in the year of our Lord 1802, and of the independence of the United States of America the twenty-seventh.

[L. S.] TH: JEFFERSON.

By the President:

JAMES MADISON, *Secretary of State.*

P. Carrington's will.

In the name of God, I, Paul Carrington, the elder, of the county of Charlotte, and State of Virginia, at present in perfect health, and sound mind and memory, do make and pronounce my last will and testament in the following form, with full view and recurrence to former and recent donations to my children of my first ventee, and observing from several late events the present circumstances of those children and their respective descendants, I now proceed to dispose of my remaining estate in the following manner, subject to the limitations hereinafter stated. I direct that the tract of land lately purchased from the estate of the late Thomas Read, esquire, deceased, may be paid for according to contract, from sources of which my executor, herein named, is well acquainted, from outstanding debts, profits of my estate, cash in hand, if any; and, finally, by the sale of the Virginia Bank stock, after applying dividends to that purpose, as far as may be found necessary to the discharge of that debt; two shares of the James river stock may also be sold. I give and bequeath unto my son Henry Carrington, and to his heirs, the said tract of land formerly the residence of Thomas Reed, esquire, with all buildings and improvements thereon, containing, by recent survey, nine hundred seventy-four and one quarter acres, be the same more or less, and desire that a title may be made him. I give and bequeath unto my daughter Lettice Carrington, and to her heirs, part of the tract of land whereon I reside, contained within the following bounds: beginning at the mouth of James' creek; thence up the same to Bouldin's line; thence along that line, southwesterly, passing three corners; thence further along Bouldin's line to pointers on y^e^ top of a ridge, near an old cartway; thence by a new line to be run directly to the branch running through the pasture where I live; thence down the said branch so as to leave it with the lands of this devise as a source of water to that plantation to Little Roanoke river; thence crossing that river, and from thence by a new right line to be run to Randolph's line; thence, eastwardly, along his line to Allen Gilliam's line, along his line to the Horsepen creek, down that creek to L. Roanoke, crossing that river, and up it, by the meanders of Jones's creek, the first station. I give and bequeath unto my son Robert Carrington, and to his heirs, the whole remainder of my lands in Charlotte county, including my planta-

tion on Staunton river, between John Randolph's plantation, now called the middle quarter, and Little Roanoke river, and up the last mentioned river to the line of his sister, with the remainder on the lower side of L. Roanoke adjoining Randolph's lands, together with the lands purchased by James Collins, and those purchased of Anthony Handly, with the remainder of my lands purchased of John and William Futh, where my dwelling house stands. Those several tracts are bounded by the lines of James Bouldin's estate, Jones's creek, the lines of Warner Lewis, Pleasant Lipscomb, John Randolph, Staunton and L. Roanoke rivers, and the lines of that devised to my daughter Lettice. I give and bequeath unto my son Henry, and his heirs, my undivided interest in the Ohio Land Company grant, in the State of Ohio, descended to me by the death of my brother Edward Carrington. I give and bequeath my daughter Lettice, my reversionary interest in the lot or lots, and houses, within the city of Richmond, formerly occupied by my brother Edward Carrington, whereon he resided, and at present occupied by his widow Eliza J. Carrington, during her life. I give and devise unto my son Henry, daughter Lettice, and son Robert, all and every of my negroes, slaves of every description, with the increase of the females to the time of my death, to be equally divided between them, each accounting for such, if any, they may receive during my life. I give and devise unto my son Henry, daughter Lettice, and son Robert, the residue and remainder of my estate, real and personal, rights and credits of every kind and denomination whatever, and wherever found, to be equally divided between them: I desire that there be no appraisement of my estate. My friend and son-in-law S. W. Venable is hereby appointed guardian in general to my son Robert; Edward C. Carrington is appointed guardian to my daughter Lettice; my affectionate son Henry Carrington, in whom I have unbounded confidence, is hereby appointed executor of this will, and desire that he be admitted as such, without being held to security for faithful performance of that trust. Sealed with my seal, signed in my well known handwriting, and declared to be my last will and testament, the 21st day of November, in the year 1817.

[L. S.] P. CARRINGTON, *Senior.*

At a court held for Charlotte county, July 6th, 1818, this last will and testament of Paul Carrington, senior, deceased, was presented in court, and there being no witness subscribed to the will, William M. Watkins and Henry A. Watkins being sworn in court, each deposeth and saith that they are well acquainted with the handwriting of the testator, and believe that the said will and the name thereto subscribed, are all of the testator's handwriting: Whereupon, the said will is ordered to be recorded; and, on the motion of Henry Carrington, the executor named in the will, who made oath according to law, certificate is granted him for obtaining a probate of said will in due form without giving security: Whereupon, the said Henry Carrington entered into, and acknowledged bond according to law.

Teste. WM. L. MORTON, *C. C. C.*

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Virginia: I, Winslow Robinson, clerk of the county court of Charlotte, in the State of Virginia aforesaid, do hereby certify that the foregoing will of Paul Carrington, senior, deceased, and the certificates thereto annexed, are truly copied from the reords in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at the court-house of the said county, the fourth day of April, in the year of our Lord one thousand eight hundred and twenty-one, and in the forty-fifth year of the commonwealth.

[L. S.] WINSLOW ROBINSON, *Clk.*

I, Clement Carrington, presiding justice of the peace in and for the county of Charlotte, in the State of Virginia, do hereby certify that Winslow Robinson, whose signature appears to the above certificate, is now, and was at the time of signing the same, clerk of the said county court of Charlotte, and that due faith and credit ought to be given to all his official acts, and that his attestation is in due form of law.

Given under my hand and seal, this day of 1821.

CLEM. CARRINGTON. [L. S.]

Deed from Hannah Cabell to E. Carrington.

This indenture, made the twenty-fifth day of November, in the year of our Lord eighteen hundred and thirteen, between Hannah Cabell, of the county of Nelson, and *and* State of Virginia, of the one part, and Elizabeth Carrington, widow and relict of Edward Carrington, deceased, of the city of Richmond, of the other part, witnesseth that the said Hannah Cabell, for and in consideration of the love and affection which she has and bears for her sister-in-law, the said Elizabeth Carrington, and in the further consideration of the sum of five shilling to her in hand paid by the said Elizabeth, the receipt whereof is hereby acknowledged, hath given, granted, assigned, bargained, and sold, and by these presents doth give, grant, assign, bargain, and sell, to the said Elizabeth Carrington, all the right, title, interest, claim, and demand of her the said Hannah Cabell, as one of the co-heirs and distributees of her brother the said Edward Carrington, deceased, in and to all and every part of the estate of the said Edward Carrington, real, personal and mixed, whereof he died seized or possessed, and to which he was in any manner entitled to, and wheresoever the same may lie or be in Virginia, Kentucky, Ohio, or elsewhere, together with her right as co-heir and distributee as aforesaid, in and to the rents, issues, profits, and interest, of the said estate since the death of the said Edward; and the said Hannah Cabell for herself, her heirs, executors, and administrators, covenants, promises, grants, and agrees to and with the said Elizabeth Carrington, her heirs, executors, administrators, and assigns, that she will at all times to come, and at the costs and charges of the said Elizabeth, make and execute all such further and other conveyances and assurances, for the purpose of more effectually conveying and assuring the estate and interest hereby intended to be conveyed and assured, as shall be advised, devised, or required. In witness whereof, the said Hannah Cabell hath

hereunto subscribed her name, and affixed her seal, the day and year first above written.

HANNAH CABELL. [L. S.]

Sealed and delivered in the presence of

E. W. WIRT,
A. S. B. CABELL,
WM. H. CABELL,
L. E. CABELL,
NANCY PORTER,
E. M. ARCHIBALD.

At a court of hustings held for the city of Richmond, at the court-house, the 18th day of March, 1814, this indenture was proved by the oaths of E. W. Wirt, A. S. B. Cabell, and William Cabell, witnesses thereto, and ordered to be recorded; and the same was ordered to be certified to the courts of the several counties and States wherein any of the land in the within indenture may lie, to be there recorded.

Teste.

THOS. HOWARD, *C.*

STATE OF VIRGINIA, *City of Richmond, to wit:*

I, Thomas C. Howard, clerk of the court of hustings for the said city, do hereby certify that the foregoing is a true transcript from the records of the said court.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court of hustings, this nineteenth day of April, in the year one thousand eight hundred and twenty one.

[L. S.] THOS. C. HOWARD, *Cl'k.*

STATE OF VIRGINIA, *City of Richmond, to wit:*

I, John Adams, mayor of the said city of Richmond, and presiding magistrate of the court of hustings thereof, do certify that the foregoing attestation of Thomas C. Howard, clerk of said court, is in due form. Given under my hand, this 20th day of April, 1821.

JOHN ADAMS, *Mayor.*

Marshal's deed.

To all to whom these presents shall come: I, John Hamm, Marshal of the District of Ohio, sends greeting:

Whereas, by the judgment and decree of the seventh circuit court of the United States of America in and for the district of Ohio, on the twelfth day of September, in the year one thousand eight hundred and fifteen, of the term of September in the year aforesaid, Eliza J. Carrington, administratrix of Edward Carrington, deceased, complainant in chancery, recovered against Samuel G. Martin, defendant in said suit, the sum of four thousand six hundred and thirty-four dollars and fifteen cents, and one hundred and fifty-five $\frac{80}{100}$ dollars cents, for the costs and charges by her in her suit in that behalf expended, whereof the said Samuel was convicted as appears of record in said court; and whereas by the same court it was then and there in that behalf adjudged, or-

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dered, and decreed, to wit, that the said complainant recover against the said Samuel the said sum of four thousand six hundred thirty-four dollars and fifteen cents, and costs, and that unless the same be paid on or before the fifteenth day of November next, ensuing the said term of September, the premises in the bill of the said complainant set forth and described, to wit, two tracts of land situate on the waters of the Little Miami river, in the State of Ohio, surveyed in the name of the said Carrington, distinguished on the books of Richard C. Anderson, surveyor, by numbers nine hundred eighty-six, and two thousand four hundred and thirty-three, of one thousand three hundred and sixty-seven acres; and number one thousand three hundred and sixty-seven, one thousand acres; being, in the whole, two thousand three hundred and sixty-seven acres (more or less,) or so much thereof as would be sufficient to satisfy and pay said decree, interest, and costs, and the costs of sale, be exposed to sale at public auction by the marshal of said district, at the door of the court-house, for ready cash, to the highest and best bidder, for the highest and best price that could be obtained, to be applied to the payment of said decree, if so much could be made; such sale to be advertised previous to the time thereof, five weeks successively, in some public newspaper printed in the town of Chillicothe. And whereas, also, by virtue of a certain writ of venditioni exponas issued out of the said court, dated the twenty-fourth day of October, in the year one thousand eight hundred and sixteen, at the suit of the said Eliza, and to me directed, commanding me to levy the aforesaid sums of money, I have levied and taken the lands and tenements above described. And whereas the said premises, with their appurtenances, since the seizure by me made by virtue of said writ, have been exposed to sale at public vendue, first giving notice in one of the public newspapers in the town of Chillicothe, five weeks successively previous to said sale, as in and by said decree is directed. And whereas, at the said sale, the said Eliza J. Carrington bid for the said premises the price or sum of five thousand four hundred forty-two $\frac{25}{100}$ dollars, being the highest and best bidder for the highest and best price or sum, became the purchaser for the aforesaid price or sum of five thousand four hundred forty-two $\frac{25}{100}$ dollars. Now, know ye, that I, the said John Hamm, marshal aforesaid, by virtue of the said writ of venditioni exponas, and by virtue of the statute in such case made and provided, and for and in consideration of the sum aforesaid to me in hand paid by the said Eliza, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Eliza, her heirs and assigns, for ever, the said several lots or parcels of land, with the appurtenances, and all the estate, right, title, and interest, which the said Samuel of right had in and to the same: to have and to hold the said lots, pieces, or parcels of land, with the appurtenances unto the said Eliza, her heirs and assigns, for ever, as fully and absolutely as I, the said John Hamm, marshal as aforesaid, might, could, or ought to grant, bargain, and sell the same by force of the statute aforesaid, and the said writ of venditioni exponas, or otherwise. In testimony

whereof, I have hereunto set my hand and seal this eighth day of January, one thousand eight hundred and seventeen.

[SEAL.] JOHN HAMM, *Marshal Ohio District.*

Sealed and delivered in the presence of

HENRY BRUSH, SAMUEL HERRICK.

THE STATE OF OHIO, *Ross County, ss.*

Personally came before me, the subscriber, a justice of the peace in and for said county, the within named John Hamm, marshal of the Ohio district, and acknowledged the within, signing and sealing to be his act and deed, for the purposes therein expressed. Given under my hand and seal, this eighth day of January, 1817.

WM. CREIGHTON, Sen., *J. P.* [SEAL.]

STATE OF OHIO, *Ross County, ss.*

Personally appeared before me, the subscriber, a justice of the peace in and for said county, the within named John Hamm, marshal of the Ohio district, and acknowledged the within, signing and sealing, to be his act and deed for the purposes therein mentioxed. Given under my hand and seal this 10th day of September, 1817.

Guardian ad litem approved.

WM CREIGHTON, Sen. *J. P.* [SEAL.]

Order for publication.

And, thereupon, the bill aforesaid being filed, the court here appoint Isaiah Morris, guardian *ad litem* for George Carrington, defendant, infant son of George Carrington, deceased.

And it appearing to the court, that the defendants are not residents of the State of Ohio, it is therefore ordered by the court that notice of filing of this bill, and of the pendency of this suit, be given to the said defendants, by publishing the same in the Wilmington Spectator, a newspaper to be printed in Wilmington, in the county of Clinton, and State of Ohio, or in the Western Star and Lebanon Gazette, a public newspaper printed in Lebanon, in the county of Warren, in the State of Ohio, for nine weeks successively prior to the next term of this court, requiring the said defendants to appear and plead, answer or demur, to the said bill, or the said bill, and the matters therein stated, will be taken pro confesso as to them. Whereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here thereon, is continued until the twelfth day of April next.

Publication proven.

On which day, to wit, the twelfth day of April aforesaid, before the judges aforesaid of our court of common pleas had at Wilmington, comes the said Eliza J. Carrington, by her solicitor aforesaid, and it being made to appear to the satisfaction of the court that notice of the filing of the bill, and of the pendency of this suit, has been given to the said defendants by publishing the same in the Wilmington Spectator, a newspaper printed in Wilmington, in the county of Clinton, and State of Ohio, for nine weeks successively previous to this term of said court, agreeably to the order of this court at their last term. On motion of complainant, by her counsel, it is ruled and ordered by the court here that the defendants file their answer by next term: whereupon further process, &c. between, &c. by order, &c. is continued until the ninth day of August next; on which day, to wit, on the ninth

Rule for answer, and continued.

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day of August aforesaid, that is to say, the ninth day of August, in the year of our Lord one thousand eight hundred and twenty-four, before the honorable Joshua Collett, esquire, president, Jesse Hughes, Aaron Sewell, and James Dakin, esquires, his associate judges of our said court of common pleas here at Wilmington, comes the said Eliza J. Carrington, by Thomas Scott, esquire, her counsel, and the defendant George Carrington, infant son of George Carrington, deceased, by Isaiah Morris, his guardian ad litem, and the said defendant George Carrington by Isaiah Morris, his guardian ad litem aforesaid, filed in our court here his answer to the bill of the said complainant, in the words following, to wit:

Answer of guardian.

The answer of George Carrington, infant son of George Carrington, deceased, by Isaiah Morris, his guardian ad litem, to the bill of complaint exhibited against him and the other heirs of Colonel Edward Carrington, deceased, in the honorable the court of common pleas of Clinton county, by Eliza J. Carrington: This defendant, saving and reserving to himself all benefit and advantage of exceptions to the many inperfections in the complainants' bill, for a full answer thereto by his guardian ad litem aforesaid, saith he is a stranger to all the matters and things charged in complainants' bill, otherwise than that he has heard the same are true, but, as he is of tender years, he prays the honorable court to guard his interest; and having fully answered, he prays to be hence dismissed with his reasonable costs and charges in this behalf expended.

ISAIAH MORRIS, *Guardian ad litem.*

Decree.

And the other defendant hereinbefore named, although duly notified of the pendency of this bill, still failing to appear and answer the complainants' bill, although ruled so to do, the same is to them taken for confessed. And the said bill, answer of the said infant defendant, by his guardian aforesaid, and exhibits and proofs being read, and the complainant, by her solicitor, fully heard, on consideration whereof, it is the opinion of the court here that the law and equity of the case is with the complainant. It is therefore adjudged, ordered, and decreed, by the court, that the said defendants of full age, on or before the tenth day of November next, and the said infant defendant within six months after he becomes of full age, convey to the complainant, her heirs and assigns, for ever, by a good and sufficient deed in fee simple, all their right, title, interest, and claim of, in, and to the two several tracts or parcels of land in the bill named, devised to them as heirs of the said Edward Carrington, deceased; the first of which said tracts or parcels of land is bounded and described as follows, to wit: beginning at four sugar trees, west corner to Andrew Mead's survey, number 2,388; and south corner to Archibald Johnson's survey, 2,386, running with Johnston's line north forty-five degrees, west four hundred poles, to a sugar tree, elm, and beach in Johnston's line; thence south forty-five degrees, west four hundred poles, to a hickory, ash, and walnut: thence south forty-five degrees; east four hundred poles, crossing a branch at eighty, and one at two hundred and sixty poles, to an elm, beach, and sugar tree; thence north forty-five degrees, east four hundred poles, to the beginning; containing one thousand acres, situated on the waters of the Little

Miami, in the county of Clinton aforesaid, and patented to the said Edward Carrington, since deceased, the eleventh of December, in the year of our Lord, 1802; and the second of which said tract or parcel of land is bounded and described as follows, to wit: beginning at a hickory and two dogwoods; north corner to Nathaniel Anderson's survey, number 961; west corner to said Anderson's survey, number 730; and south corner to Theodrick Bland's survey, number 883, running with Bland's line north forty-five degress, west five hundred and thirty-four poles, crossing the creek at thirty, and one at four hundred and eighty poles, to two honey locusts, and three elms; west corner to Bland's; thence south forty-nine degrees, west four hundred and one poles, crossing a creek at forty, and one at three hundred and eighty poles to a sugar tree, white oak, and iron wood, on the bank of the creek; thence south forty-five degrees, east five hundred and sixty poles, to three small sugar trees; west corner to Anderson's; thence with his line north forty-five degrees, east four hundred poles, to the beginning; containing one thousand three hundred and sixty-seven acres, situated on the waters of the Little Miami, in the county aforesaid, and patented to the said Edward Carrington, since deceased, the eleventh of December, in the year of our Lord 1802; and, in case default be made on the part of said defendants, to make, seal, execute, and deliver, the conveyances hereinbefore directed, to the said complainant, within the time hereinbefore limited and appointed for that purpose, then, and in that case, it is hereby further adjudged, ordered, and decreed, that this decree do operate as such conveyance and assurance of the title of, in, and to, the two tracts of land and premises to the said Eliza J. Carrington, her heirs and assigns for ever: and it is hereby further adjudged, ordered, and decreed, that the complainant pay the costs of this suit by the tenth day of November next, and, on failure, execution issue. All which is decreed accordingly.

By order: J. COLLETT, *President.*

THE STATE OF OHIO, *Clinton County, ss.*

I, Isaiah Morris, clerk of the court of common pleas for the county aforesaid, do certify that the foregoing is a correct transcript of the proceedings and decree in the cause aforesaid.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, at Wilmington, the eighteenth day of August, in the year of our Lord one thousand eight hundred and twenty-four.

[L. S.] ISAIAH MORRIS, *Cl'k.*

Continuance. And, thereupon, this cause was continued; and afterwards, to wit, at the June term of said court, in the year of our Lord one thousand eight hundred and twenty-five, upon the motion of the complainant, leave is granted him to amend his bill. Amendment filed as follows, to wit:

Amended bill. CIRCUIT COURT OF THE UNITED STATES,
Seventh Circuit, Ohio District.

To the honorable the Judges of the said Court:

Your orator, Jesse McKay, in this his amended bill, filed by leave of the court, and by way of amendment to his former bill against

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E. J. Carrington, humbly represents to your honors, that, since the last term of this court, a large part of one of the entries specified in his former bill has been duly sold under the laws of the State of Ohio, and by virtue of a judgment of the court of common pleas of Clinton county, for taxes levied thereon, to one Jesse M. Wood, to wit, 1,300 acres, of entry number 986; as, also, at the same time and manner, and on a judgment duly obtained as aforesaid, was sold to the said Wood 50 acres of entry number 2,433; as also, at the same time and place, and in the manner aforesaid, and by virtue of a judgment of the said court, was sold to one James Brown, 44 acres, of entry number 1,367; all which is contrary to equity. Your orator, therefore, prays that the said defendant, under oath, the matters set forth in this amended bill; and your orator prays, as he formerly prayed, for such *such* relief, &c. as prayed in original bill, and, as in duty bound, will ever pray, &c.

B. G. LEONARD, *Solicitor for Complainant.*

Continuance.

And, thereupon, this cause was continued; and afterwards, to wit, at the January term of said court, in the year of our Lord one thousand eight hundred and twenty-six, this cause was further continued; and afterwards, to wit, at the July term of said court, in the year last aforesaid, the following exhibits and depositions were filed as evidence, to wit:

Exhibits.

Mr. McKay has purchased from me two tracts of land on the waters of the Miami; the one 1,367 acres, number 986 and 2,433; the other one thousand acres, number 1,367; for which he is authorized by me to take possession immediately.

ELIZA J. CARRINGTON.

February 4th, 1819.

JESSE MCKAY, *vs.* ELIZA J. CARRINGTON. } *In the Circuit Court of the United States for Ohio District—in Chancery.*

Deposition of Radcliff.

The deposition of Daniel Radcliff and John A. Hays, taken before me, Jesse Hughes, one of the associate judges of the court of common pleas for Clinton county, to be read as evidence in the trial of the above cause. Daniel Radcliff, of lawful age, first being sworn, deposeth and saith that he is acquainted with two tracts of land; one of which is number 986 and 2,433, for 1,367 acres, entered in the name of Edward Carrington, and is now said to belong to Eliza J. Carrington; the other is number 1,367, for 1,000 acres, entered in the name of the said Edward Carrington, and now said to belong to the said Eliza J. Carrington, both tracts lying in Clinton county; and that he is of the opinion that the 1,367 acres were worth, or might have been sold for three dollars, or three and a half per acre, in the year 1817 and 1818; and he is of the opinion that land in the neighborhood of said tract has depreciated in value at least one-third; and I am also of opinion that said tract would not sell for more than two dollars or two and a half per acre, taking the whole tract together; the other tract of one thousand acres, No. 1,367, I am of opinion was worth, in

1817, about five or six dollars per acre; and I am also of opinion, that said tract would not sell at this time for more than three or three and a half dollars per acre. And further this deponent saith not.

DANIEL RADCLIFF.

Deposition of Hays.

Also, John A. Hays, at the same time, being of lawful age, deposeth and saith that he is acquainted with the two tracts of land; one of which is number 986 and 2,433, 1,367 acres; and the other, number 1,367, of 1,000 acres, as I have understood, belonged to Eliza J. Carrington, and was purchased by Jesse McKay some years past—being acquainted with the land, and also the neighborhood—and am of opinion that the land No. 986 and 2,433, 1,367 acres, is not worth more than two dollars or two twenty-five cents per acre; and number 1,367, of 1,000 acres, is not worth more, at this time, than three dollars, or three twenty-five cents per acre, in my opinion. And further this deponent saith not.

JOHN A. HAYS.

THE STATE OF OHIO, *Clinton County, ss.*

Be it remembered, that, on the 18th day of August, in the year 1823, the above and foregoing depositions of Daniel Radcliff and John A. Hays were taken, sworn to, and subscribed before me, Jesse Hughes, one of the associate judges of the court of common pleas within and for the county of Clinton aforesaid. I also certify that said depositions were severally written by the witnesses whose names are subscribed thereto respectively, and that I, the said Jesse Hughes, associate judge as aforesaid, am no way interested in the event of said suit, nor counsel for either of the parties.

In testimony whereof, I have hereunto set my hand and seal at Wilmington, in the county of Clinton aforesaid, the date above written.

JESSE HUGHES, *Associate Judge.* [L. S.]

Exceptions to depositions.

The complainant will take notice that, in the hearing of this cause, the defendant will except to the reading of the deposition of Daniel Radcliff and John A. Hays, because they were taken neither pursuant to the act of Congress, or the seals of this court; no dedimus, no notice, and no proper certificate, &c. &c.

THOMAS SCOTT, *Attorney for Def't.*

Deposition of Dun.

JESSE MCKAY, Complainant,
vs.
ELIZA J. CARRINGTON, Defendant. } *In Equity.*

Circuit Court of the United States of America, Seventh Circuit, and the District of Ohio.

In pursuance to notice hereto attached and enclosed, came Walter Dun before me, at the clerk's office in Chillicothe, of the common pleas of Ross county, between the hours of seven o'clock A. M., and seven o'clock P. M., who, after being duly cautioned and

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sworn to speak the truth, the whole truth, and nothing but the truth, in the said cause pending and undetermined in said circuit court of the United States, of the seventh circuit, including the district of Ohio, in said district, deposeth and saith that he was Mrs. Carrington's agent in the prosecution of some suits for her benefit as administratrix of Edward Carrington, deceased; but that he was not, in his opinion, and to his recollection, formally and fully authorized by her in her own right to sell any of her lands in the State of Ohio, but was merely requested by her to do so in some of her letters to him, as he at present thinks. That, in pursuance of her said request, he did agree verbally with Jesse McKay for two tracts of land, which she had purchased at marshal's sale, by virtue of a decree of said court in her favor as administratrix as aforesaid, against one Martin, and referred said McKay to said Mrs. Carrington to have the verbal agreement reduced to writing.

Question by complainant. Do you not know that Mrs. Carrington had not, at the period of my purchase, the legal title to the land in controversy?

Answer. I certainly believed myself, at the time, that Mrs. Carrington had not the legal title to the lands, and am under the impression that I so advised Mrs. Carrington, but I thought that the title could easily be perfected.

Do you know whether purchasers from one Martin were in possession of the land at the time I purchased, and that they are still in possession?

Answer. I have understood that they were at the time re-purchased, and were lately in the possession, and that I understand actions in ejectment are still pending against some of them for the possession of these lands.

Question by complainant. Has not the lands in controversy depreciated considerably since the time of my purchase?

Answer. Since the time of the sale to McKay, I have had no knowledge of the said lands, but, from the general depreciation of lands in the western country, I have very little doubt but that the said lands have depreciated.

WALTER DUNN.

In testimony of the oath and subscription of the said Walter Dunn as aforewritten, I, as president of the court of common pleas of the second circuit, subscribe and seal the same, and enclose the notice.

[L. S.] JOHN THOMPSON.

CIRCUIT COURT UNITED STATES, *Ohio District.*

JESSE MCKAY,
vs.
ELIZABETH J. CARRINGTON. } *In Chancery.*

Sir: Please to take notice that, on the ninth day of July instant, at the office of Levin Belt, mayor of Chillicothe, I shall proceed to take the depositions of Cadwallader Wallace and others, to be used

Notice to take depositions.

on the hearing of this cause. Said depositions will be taken between the hours of ten A. M. and six P. M. of that day, at the said office in Chillicothe, at which time and place you may attend.

Yours, truly,

B. G. LEONARD,
Sol for Complainant.

To THOMAS SCOTT, Esquire,
Solicitor for Defendant.

Dated 6th July, 1824.

I acknowledge due service of a copy of the above, this 8th day of July, 1824.

THOMAS SCOTT.

STATE OF OHIO, *Ross County.*

Deposition of Fulton.

Pursuant to annexed notice to take depositions in a case pending in the circuit court of the United States, Ohio district, wherein Jesse McKay is complainant, and Elizabeth J. Carrington is defendant, I, Levin Belt, mayor of the town of Chillicothe, did, between the hours of ten A. M. and six P. M. of Friday, the 9th day of July, 1824, attend at the mayor's office in the town of Chillicothe, being the day and place mentioned in said notice, at which time and place came John A. Fulton, who, being of full age, and by me duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, deposeth and saith:

Question by complainant's attorney. Are you acquainted with Jesse McKay?

Answer. Yes, for many years.

Question by same. Has McKee been in the habit of buying and selling land? and whether that has not been his business in Ohio?

Answer. Yes.

Question by same. Are you acquainted with the nature of the business of selling and buying lands?

Answer. I am.

Question by same. Is it not important for purchasers in such cases to get possession of lands as soon as possible?

Answer. Yes, it is all important to get the possession, as without it no sales can be made to any advantage, unless to persons well acquainted with the title, or to speculators. Farmers, or men lately come to the country, would not purchase.

Question by same Would land speculators consider themselves bound in such contracts, when they could not get into immediate possession?

Answer. I should not consider myself bound, and do not suppose any one would who understood his business.

Question by same. Are you acquainted with surveys No. 2,433 and 986, and also with survey 1,367?

Answer. I am not acquainted with these surveys particularly, but am acquainted with the lands in the neighborhood, and where the surveys are.

Question by same. Did lands in that neighborhood appreciate between the years 1805 and 1811? and how much?

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Answer. They did appreciate, but how much he cannot exactly say, but thinks fifty per cent. at least. And further saith not.

JOHN A. FULTON.

Deposition of Wallace.

At the same time and place, came Cadwallader Wallace, who being also of full age, and by me duly sworn and cautioned, deposeth and saith that he is and has been acquainted with Jesse McKee ever since the year 1809 or 1810; that most of the time Mr. McKee has been in the habit of buying lands for the purpose of retailing them; that it is all important for land purchasers in such cases to get the immediate possession; that he, this deponent, has been engaged in the land business for a number of years. And further saith not.

CADWALLADER WALLACE.

I, Levin Belt, mayor as aforesaid, do hereby certify that John A. Fulton and Cadwallader Wallace, the before-named deponents, delivered the foregoing evidence before me, and in my hearing, at the time and place mentioned in said notice. That the same was written by me (of counsel for neither party,) and severally subscribed by themselves after being duly sworn in the cause, and in virtue of the notice aforesaid. I further certify that the interlineations and erasures in the foregoing depositions were made by me previous to their being sworn to and subscribed, and that Mr. Leonard attended the taking said depositions as the attorney for the complainant, and Thomas Scott, esquire, for the defendant.

In testimony whereof, I have hereunto subscribed by name, and affixed the seal of my office, this ninth day of July, in the year one thousand eight hundred and twenty-four.

[L. S.] LEVIN BELT, *Mayor.*

SEVENTH CIRCUIT COURT UNITED STATES, *District of Ohio.*

ELIZA J. CARRINGTON, *ad's.* JESSE MCKAY. } *In Chancery.*

Deposition of T. Scott.

The deposition of Thomas Scott, taken by consent of the parties, to be read as evidence on the hearing of the cause aforesaid. The said Thomas Scott, being of lawful age, and first duly sworn as law directs, deposeth and saith that he is the attorney of the said Eliza J. Carrington in the above and other suits; that he is also agent of the said Eliza J. Carrington for the purpose of taking possession of the lands mentioned in complainant's bill under the ejectments prosecuted by her in this honorable court to recover possession thereof; and that, in a few weeks after recovering possession of said lands under the said ejectment, he, as her agent, offered to put the said complainant in possession thereof, which the complainant declined accepting. The judgments in the above ejectments were had at the September term of this court, 1823: that he and his late partner, D. L Grice, were employed to prosecute by the complainant in behalf of the above ejectments in the name of the said Eliza J. Carrington, for the purpose of recovering possession of said land.

Question by complainant's counsel. Was complainant a land-jobber at the time of the purchase? and was Walter Dunn acquainted with the fact?

Answer. He was so reputed, and I believe Walter Dunn was acquainted with the fact.

THOMAS SCOTT,
Solicitor for Defendants.

I admit the above to be read in evidence the same as if it had been duly taken as a deposition in this cause.

B. G. LEONARD,
Solicitor for Complainant.

Certificate of sheriff of Clinton county.

I, L. Wright, sheriff of Clinton county, do certify that, by a writ of fieri facias et levari facias, from the court of common pleas of Clinton county, against Eliza J. Carrington, for costs of a certain suit in chancery prosecuted by Eliza J. Carrington against the co-heirs of Edward Carrington, deceased, I did sell to James Brown, on the twenty-sixth day of November, 1825, fifty acres of land as the property of said Eliza, being part of Edward Carrington's survey, number 1,367, described as follows, to wit: beginning at the west corner of said survey, No. 1,367; north corner of William Giles's survey, number 1,008; east corner of Joseph Blackwell's survey, number 1,382; and south corner of John Steel's survey, No. 1,458; thence, with the line of Steel's survey, north 45°, east 100 poles, to a beach and sugar tree corner, to Peter Lawrance's; thence south 45°, east 80 poles; thence south 45°, west 100 poles, to the original line of said Carrington's survey, number 1,367; thence with his line to the beginning.

Given under my hand, the sixteenth day of December, eighteen hundred and twenty-five.

L. WRIGHT,
Sheriff Clinton County, Ohio.

Objection. Objected to.

THOMAS SCOTT,
Attorney for Defendant.

THE STATE OF OHIO, *Clinton County, ss.*

To the Sheriff of said County, greeting:

Fi. fa. et le. fa. to sheriff of Clinton county.

Whereas, at a court of common pleas holden at Wilmington, within and for the county of Clinton aforesaid, on the 9th day of August, in the year of our Lord one thousand eight hundred and twenty-four, it was ordered, adjudged, and decreed by the same court, that Eliza J. Carrington should pay the costs of a certain suit in chancery, prosecuted by the said Eliza J. Carrington against the co-heirs of Edward Carrington, deceased, by the tenth day of November next, after the rendition of said decree, which costs and charges are taxed at thirty-four dollars ninety-nine and one half cents, whereof the said Eliza J. Carrington is convicted, as appears to us of record: Therefore, we command you, that, of the goods and chattels of the said Eliza J. Carrington in your bailiwick, you cause to be made the said sum of thirty-four dollars ninety-nine and one half cents, the costs taxed as aforesaid, if

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so much goods and chattels of the said Eliza may be found in your bailiwick, and, for want of goods and chattels, that you cause the same to be made of the lands, tenements, and hereditaments of the said Eliza J. Carrington lying and being in your bailiwick; and have you that money before the judges of our court of common pleas at the court-house in Wilmington, on the twenty-eighth day of November next, to render for the costs and charges aforesaid, and have then there this writ.

Witness, the honorable Joshua Collet, esq., president judge of our said court of common pleas, at Wilmington, the twentieth day of September, in the year of our Lord one thousand eight hundred and twenty-five.

[L. S.] ISAIAH MORRIS, *Cl'k.*

The reading of this evidence will be objected to. Objection.

THOMAS SCOTT,
Attorney for Defendant.

On which day, to wit, the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and twenty-five, before the honorable Joshua Collett, esquire, president, and his associate judges of our said court of common pleas here at Wilmington, the sheriff of the county of Clinton aforesaid, to wit, Lewis Wright, esq., returns the said writ of execution in the words following, to wit: "No goods; I levied this writ on fifty acres of land, part of Edward Carrington's survey No. 1,367, described as follows, to wit: beginning at the west corner of said survey, number 1,367; north corner of William Giles's survey, number 1,008; east corner of Joseph Blackwell's survey, number 1,382; and south corner of Jno. Steel's survey, number 1,458; thence, with the line of Steel's survey, north 45°, east 100 poles, to a beach and sugar tree corner, to Peter Lawrance's; thence south 45°, east 80 poles; thence south 45°, west 100 poles, to the original line of said Carrington's survey, number 1,367; thence with his line to the beginning; and, after duly advertising the same for thirty days previous to the day of sale in the Western Argus, a public newspaper printed in Wilmington, Clinton county, Ohio, I did, on the twenty-sixth day of November, 1825, expose the same to public sale at the court house in Wilmington, by public out-cry, and did then and there sell the same at public sale, as aforesaid, to James Brown for the sum of sixty dollars, the said James Brown being the highest and best bidder for the same, and the said bid being two-thirds of the appraised value thereof made by five respectable freeholders of the county of Clinton, who were by me duly summoned and sworn to appraise the same; a copy of which appraisement was duly deposited with the clerk of the court of common pleas of Clinton county. Sheriff's return.

L. WRIGHT, *Sheriff.*"

Sheriff's fees, service - - - -	$ 35
Summoning jury, - - - - -	2 00
Swearing do., - - - - -	12
Copy of appraisement, - - - -	25

Poundage,	70
Mileage,	30
Advertising,	12½
Printer's fees,	3 00
Appraisers' fees,	2 50
	$9 34½

THE STATE OF OHIO, *Clinton County, ss.*

At a court of common pleas, begun and holden at Wilmington, within and for the county of Clinton aforesaid, on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and twenty-five, before the honorable Joshua Collett, esquire, president judge, Jesse Hughes, Aaron Sewell, James Dakin, esquires, associate judges.

In the record and proceedings of the same court, are the following, to wit:

Confirmation of sale.

ELIZA J. CARRINGTON, Complainant, *vs.* THE CO-HEIRS OF EDWARD CARRINGTON, dec'd. } *Fi. fa. et lev. fa. ag'st complainant for costs.*

The court having carefully examined the proceedings of the sheriff on the above writ, by virtue whereof he sold to James Brown 50 acres of land described in the return of the said sheriff, find the same to be done in all respects agreeably to the statute, and are therefore satisfied of the legality of the sale of the premises in the said return mentioned, to *to* the said James Brown. The court do therefore order that the said sheriff make the said James Brown a deed for the lands sold by virtue of said writ.

(Signed,) JOSHUA COLLETT.

THE STATE OF OHIO, *Clinton County, ss.*

I, Isaiah Morris, clerk of the court of common pleas for the county of Clinton aforesaid, do hereby certify that the foregoing contains a correct and full copy of the execution issued from our said court of common pleas for costs in the case of Eliza J. Carrington versus the co heirs Edward Carrington, deceased, the return of the sheriff of Clinton county aforesaid thereto, and the order of said court thereon, as now remaining in my office.

In testimony whereof, I hereunto set my hand, and affix the seal of our said court of common pleas, at Wilmington, the fifteenth day of May, in the year of our Lord one thousand eight hundred and twenty-six.

[L. S.] ISAIAH MORRIS, *Clerk.*

To the County Surveyor of Clinton County:

Auditor's certificate of sale.

I, John McManis, county auditor for Clinton county, do hereby certify that 50 acres of land was this day sold unto Jesse M. Wood for the sum of eight dollars forty one cents and four mills, being a part of land entered for taxation in the name of

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Edward Carrington, by number of entry 2,433. You will therefore proceed, at the request of the purchaser aforesaid, to lay off, by metes and bounds, at the most northwesterly corner of said tract, the quantity of land sold as aforesaid. In witness whereof, I have hereunto set my hand at Wilmington, in the county aforesaid, this seventeenth day of January, 1825.

JOHN McMANIS, *County Auditor.*

To the County Surveyor of Clinton County:

Auditor's certificate of sale.

I, John McManis, county auditor for Clinton county, do hereby certify that 1,300 acres of land was this day sold unto Jesse M. Wood for the sum of one hundred and thirty-eight dollars fifty three cents and four mills, being an entire tract of land entered for taxation in the name of Edward Carrington, by number of entry 986. You will therefore proceed at the request of the purchaser aforesaid, to lay off, by metes and bounds, the quantity of land sold as aforesaid. In witness whereof, I have hereunto set my hand at Wilmington, in the county aforesaid, this seventeenth day of January, 1825.

JOHN McMANIS, *County Auditor.*

Continuance.

This cause came on to be heard upon the bill, answers, exhibits, and testimony, and was argued by counsel, but the court not being fully advised in the premises, the cause is continued for final decree at the next term. And afterwards, to wit, at the December term of said court, in the year last aforesaid, the death of the complainant was this day suggested, and thereupon, by consent of parties, this suit is revived in the name of Levi Duffy, administrator of the said descendant, and this cause was continued. And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and twenty-seven, on motion of defendant, by her solicitor, leave is given to file a further answer to the amended bill of complainants: Whereupon, she files the same as follows, to wit:

Death of complainant suggested, &c.

Leave to file amended answer.

ELIZA J. CARRINGTON, *ad's.*
LEVI DUFFY, administrator of the estate of Jesse McKay, dec. } *In Chancery.*

Amended answer.

And the said Eliza J. Carrington, by leave of the court here for that purpose first had and obtained, for answer unto the amended bill of the complainant, filed on the thirteenth day of June, 1825, saith that she admits that, subsequent to the term of this court in eighteen hundred and twenty-five, certain portions of the land in question were sold for the taxes due thereon, but whether the same were sold on judgments regularly obtained, and the proceedings thereon were in other respects regularly conducted so as to vest in the purchaser good titles, she is unable to answer yea or nay, and requires proof if such be deemed material, and she was in any manner bound for the payment of said taxes, which she denies. She, further answering, saith that the laws of Ohio under which said sales were conducted, allowed of a reduction thereof

in two years, and that, in pursuance of the provisions of said statute, she has paid into the proper office the full amount of the moneys required to be deposited, in order to a redemption of said lands, and has, pursuant to the provisions of said statute, filed her petition or petitions in the court of common pleas of Clinton county in which the said lands were situated, praying for the redemption thereof; and has given the notice required by the said statute of the payment of said money, and of the pendancy of said petitions for redemption. She further states that said petition or petitions were continued at the last term of that court, and she entertains no doubt but that the complete evidence of the redemption of said lands will be procured by the next term of this court, should a continuance be granted. She therefore prays that this cause be continued to the next term.

ELIZA J. CARRINGTON,
By THOMAS SCOTT, *her Attorney.*

Leave to amend bill, &c.

The respondent having, by leave, amended her answer during the present term, on motion of complainant, leave is given him to amend his bill, which is done.

CIRCUIT COURT UNITED STATES, *Seventh Circuit, Ohio District:*

LEVI DUFFY, adm'r of Jesse McKay, dec'd,
vs.
ELIZA J. CARRINGTON.

The complainant amends this, by bill, by alleging as follows: The said Levi, administrator of Jesse McKay as aforesaid, say that the legal and equitable estate in the said premises mentioned in the agreement, descended unto, and were vested in the heirs at law of the said Edward Carrington, deceased, by and on the death of the said Edward Carrington, and that the said estate, both equitable and legal, was, and still is, invested in the heirs at law and those deriving title from and under them, of whom the said Elizabeth J. Carrington is not, &c. And complainant further alleges, that the said Eliza J. instituted a suit in the chancery side of the court of common pleas of the county of Clermont, against Henry Carrington and others; and on the 9th August, 1824, a decree was rendered in the said cause that the said Eliza J. should pay the costs of the said suit, in which decree a writ of fi. et le fa. issued, directed to the sheriff of the said county of Clermont, by virtue of which said writ, the said sheriff levied upon 50 acres, part of survey number 1,367, and sold and conveyed the same to one James Brown, which sale was duly confirmed by the said court of common pleas of Clermont county: the interest of the said Eliza J. in the said property was sold by virtue of the said writ.

B. G. LEONARD,
Sol. for Complainant.

Continuance.

And thereupon, this cause was continued, and remanded to rules. And afterwards, to wit, at the December term of said court, in the year last aforesaid, this cause was further con-

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tinued. And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and twenty-eight, the death of the complainant was suggested, and thereupon, by mutual consent of parties, by their counsel, it is ordered that this cause be, and it is hereby revived in the name of Joshua Yeo, administrator de bonis non of Jesse McKay, deceased, complainant, and by like consent the decree pro confesso, entered herein, is set aside: and thereupon, the respondent, by Thomas Scott, esquire, her solicitor, files her answer to the amended bill of complaint as follows, to wit:

Revived and Yeo made party.

Answer to amended bill.

Seventh Circuit Court United States, District of Ohio:

ELIZA J. CARRINGTON, *ad's* JESSE MCKAY'S administrator. } *In Chancery.*

The answer of Eliza J. Carrington to the amended bill filed in this cause on the 24th day of July, 1827. This defendant, saving, &c. for answer, say that it is not true, as charged, that the legal and equitable estate in the said premises mentioned in the agreement, descended unto and were vested in the heirs at law of the said Edward Carrington, deceased, by and on the death of the said Edward Carrington; and that the said estate, both equitable and legal, was, and still is, invested in the said heirs at law: she also denies that fifty acres of the land in the said contract mentioned, was sold as charged. In further answer to the amended bill of the complainant, filed on the 13th day of June, 1825, she says that every acre of the land sold for taxes, as charges, has been by her redeemed, and that she is prepared at any time when the purchase money shall be fully paid, to make to the complainant a complete title to the lands and premises in question; and, having fully answered the complainant's amended and original bill, she prays to be hence dismissed, &c.

THOMAS SCOTT,
Sol. for Defendant.

Continuance.

And thereupon, this cause was further continued. And afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and twenty eight, this cause was further continued, and afterwards, to wit, at the July term of said court, in the year eighteen hundred and twenty-nine, the following agreement was filed as follows, to wit:

Agreement of parties.

United States' Circuit Court:

ELIZA J. CARRINGTON, *ad's* JOSHUA YEO, administrator de bonis non of Jesse McKay, deceased. } *In Chancery.*

It is agreed that all the depositions now on file in this cause may be read on the hearing, all exceptions as to the time, place, and manner of taking the same, being waived. This cause is revived in the name of Joshua Yeo, by consent as above; the statements made by Walter Dunn in his deposition, are admitted to be true; and the replication heretofore filed shall be held a sufficient repli-

cation to all the amended answers, which are admitted as if sworn to; 29th July, 1829.

B. G. LEONARD,
Sol. for Complainant.
THOMAS SCOTT,
Counsel for Defendants.

Continuance. And afterwards, to wit, at the December term of said court, in the year last aforesaid, this cause was further continued. And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and thirty, the following depositions and exhibits were filed as evidence, to wit:

Deposition of Dunn.

ADMINISTRATOR of Jesse McKay, dec. *ad's* ELIZA J. CARRINGTON. } *In Chancery.*

Walter Dunn personally appeared before me, a justice of the peace, in and for the county of Ross, the State of Ohio, and being by me sworn, deposeth and saith that the lands in controversy in the above case, now pending in the circuit court of the United States, Ohio district, were sold for the taxes during the life time of said McKay; and that this deponent, as the agent of the said Carrington, had them redeemed, in part, by application to the court of common pleas for Clinton county, wherein they are situated, and in part by assignments from the tax purchasers; so that the whole of said land, namely, two surveys, one of 1,367 acres, and one of 1,000 acres, (these quantities are stated from recollection) is now free from all embarrassment on account of sales for taxes. And further this deponent saith not.

WALTER DUNN.

Sworn to, and subscribed before me, this eleventh day of July, 1828.

JAMES MILLER, *J. P.*

Transcript in the case of Carrington vs. Martin

Be it remembered that heretofore, to wit, on the third day of July, in the year of our Lord one thousand eight hundred and twelve, came Eliza J. Carrington, administratrix of Edward Carrington, deceased, a citizen of the State of Virginia, by Henry Brush, esquire, her attorney, and filed in the clerk's office of the circuit court of the United States for the seventh circuit and district of Ohio, her bill of complaint, in chancery, against Samuel G. Martin, a citizen of the State of Ohio, which is as follows, to wit:

To the honorable the Judges of the Seventh Circuit Court of the United States for the Ohio District, sitting in Chancery:

Humbly complaining, your oratrix Eliza J. Carrington, administratrix of Edward Carrington, deceased, a citizen of the State of Virginia, showeth unto your honors that her late husband, the said Edward Carrington, now deceased, in his life time, made and entered into articles of agreement, and contracted with one Samuel G. Martin, a citizen of the State of Ohio, whom your orator

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prays may be made defendant to this bill of complaint, bearing date the eleventh day of October, in the year of our Lord one thousand eight hundred and five, whereby it was stipulated and agreed by and between the parties thereto, as follows, viz. The said Carrington sold to the said Martin two tracts of land situate on the waters of the Little Miami river, in the State of Ohio, surveyed in the name of said Carrington, distinguished in the books of Richard C. Anderson, surveyor, by number 986 and 2,433, of 1,367 acres, number 1,367, 1,000 acres, being in the whole two thousand three hundred and sixty-seven acres, more or less, at the price of one dollar and fifty cents per acre, amounting to three thousand five hundred and fifty dollars and fifty cents, to be paid by said Martin, his heirs, executors, or administrators, as follows, viz. Fifty dollars in hand, one thousand dollars on or before the first day of May next, after the date of said agreement or contract, and the remaining balance on the first day of May, one thousand eight hundred and seven; the said Carrington, his heirs, &c. to retain the title in all the lands until the purchase money shall be fully paid, then to convey, in fee simple, with a special warranty against the said Carrington and his heirs, and all persons claiming by, from, or under him, or them; and it was further agreed between said parties that, should their be a failure on the part of the said Martin, his heirs, executors, or administrators, in payment at any one of the periods stipulated, it should be at the option of the said Carrington, his heirs, executors, or administrators, at any time thereafter, to annul the bargain, by giving notice thereof, and paying into the Bank of Virginia on account of said Martin, his heirs, &c &c. any sum or sums of money without interest, which may have been paid on account of the said purchase: to which said contract or agreement, for the greater certainty, your oratrix prays a reference, and that the same may be taken as a part of this her bill of complaint. And your oratrix further sets forth and states that the said defendant paid the said sum of fifty dollars stipulated to be paid in hand; and, on the thirteenth of March, in the year one thousand eight hundred and seven, paid to the said Edward, in his life time, five hundred dollars on account of said contract or purchase, which are evidenced by endorsements thereon signed by the said Edward, and being referred to, are in like manner made a part hereof by your oratrix, who, also, further states, that by another endorsement on said contract of the eleventh of November, in the year one thousand eight hundred and nine, also referred to and made a part hereof, it appears that the said defendant, in that day received of the said Edward, in his life time, thirty dollars loan, which your oratrix considers a reduction of so much of the last payment above specified of five hundred dollars, or to be taken thereout. Your oratrix further sets forth and relates that, afterwards, to wit, on or about the twenty-ninth day of October, in the year one thousand eight hundred and ten, the said Edward Carrington, her late husband, departed this life without having annulled, rescinded, or in any manner altered the said contract and agreement, or the terms thereof, and without leaving any last will or testament. And that

your oratrix, since the decease of the said Edward, has been duly appointed administratrix of his, the said Edward's, estate, and hath taken upon herself the burthen of the administration thereof, and brings here into court the said letters of administration, which testify the committing the administration in form aforesaid; and to the same refers, and prays that they may be taken as a part hereof. But now, so it is, may it please your honors, that the said complainant having entered into a combination and confederacy to and with divers other persons as yet unknown to your oratrix, whose names, when discovered, your oratrix prays may be inserted herein with apt and proper words to charge, and every of them, as defendants, to defraud your oratrix in the premises; and having thereupon formed a design to disappoint her said purchase moneys, and to defeat her of the benefit of the said articles of agreement so made and entered into as aforesaid, he, the said defendant, has failed and refused to pay to your oratrix the balance of the moneys agreed by him to be paid for the purchase of the said lands and premises; and, to give some countenance to the unjust pretences and refusals of the said defendant, he pretends and gives out that the said bargain and contract is annulled, and ought to be rescinded by said refusal, and that your oratrix ought to be compelled to refund the moneys received by her said intestate in manner aforesaid, and that your oratrix is altogether unable to make good the title to said premises to the said defendant according to the stipulations in the said contract contained. Whereas your oratrix charges, (and so the truth is) that the said decedant, the said Edward Carrington, in his life time, and after the last payment became due, was always able, ready, and willing, to make the said conveyance and title to the said land and premises, whenever the said defendant would make payment of the purchase money therefor, agreeably to the true intent and meaning of the said contract, and that the same ought not to be annulled by the consent and at the election of the said decedant, Edward, in his life time, or by his representatives, his heirs, executors, or administrators, after his death; neither of which have done any act or proceeding to annul, or in any manner alter the same, but have been always ready and willing, and do hereby offer to perform and execute every thing in the said articles contained on their part to be done and performed. And your oratrix further charges that the said defendant is altogether unable to perform the said contract and agreement on his part, by paying the balance of the purchase money for said land, and, as she is informed, and verily believes the same to be true, is insolvent. And that he, the said defendant, with the like design and intention of defrauding your oratrix, has disposed of said land by sale to some persons unknown to your oratrix, and ignorant of the nature his title to the same, and has no funds or property out of which the balance of the purchase money can be made; all which actings, refusals, and pretences, and designs of the said defendant, are contrary to equity and good conscience, and tend manifestly to the great wrong and injury of your oratrix. In tender consideration whereof, and for as much as your oratrix cannot compel the payment of the balance of said purchase money, but by

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a sale of said land for that purpose, nor obtain a due execution, or specified performance of the contract and articles aforesaid, or be otherwise relieved in the premises, than by the aid and assistance of this honorable court: To the end, therefore, and in order that the said defendant and his confederates, when, and as they shall be discovered, may upon their several and respective corporal oaths, true and perfect answers make to all and singular the premises herein set forth, as fully as if the same were here again repeated and particularly interrogated to be answered unto; and, more especially, that the said defendant may set forth according to the best of his knowledge, information, and belief, answer and say, whether your oratrix's intestate, the said decedant, Edward Carrington, was not at the time of the contract aforesaid, and was since, until his death, seized in fee, or how otherwise, well entitled to the said lands and premises as hereinbefore set forth, and had a lawful right to convey the same according to the terms and conditions of said contract and agreement; and whether your oratrix, as the representative of the said decedant, has not now the like right to convey the same; or, if either refused a compliance of the said contract on their part; whether he, the said defendant, did not make and enter into the said contract as above set forth, and make the payments as mentioned; whether the balance of the purchase money is not now due and unpaid by him, or any other person for him; and if any more is paid, state how much, by whom, and at what time; and whether the said defendant did not receive of the said decedant, in his life time, a loan of thirty dollars as above set forth, thereby reducing the last aforesaid payment so much, allowing interest thereon from the time of the said last payment until the receipt of the said loan. May it please your honors to make a decree, and order that the said lands shall be sold at public vendue or sale, for such price or sum as may be offered for them, or such parts thereof as will be sufficient to satisfy and pay the residue of said purchase money, with interest from the time the same became due, unless the said defendant, within a reasonable limited time, will make payment for the same, and *and* direct and order how, when, and in what manner, conveyances of said land shall be made, by whom, and to whom: and, also, that the purchaser, in case the same be sold, be required to pay the purchase money to your oratrix, or into court, so that your oratrix may receive the benefit thereof, and receive such other relief in the premises as the nature of her case requires, and as shall be agreeable to equity and good conscience. Your oratrix prays your honors to grant the writ of subpœna to the said defendant directed, requiring to appear at a certain time and under a certain penalty, and answer this your oratrix's bill of complaint.

HENRY BRUSH, *Counsel.*

And upon which said bill, the following subpœna issued, to wit: The United States of America to the marshal of the district of Ohio greeting: You are hereby commanded to summon Samuel G. Martin, a citizen of the State of Ohio, to appear before the judges of our circuit court of the United States for the

seventh circuit and district of Ohio, at the court-house, in the town of Chillicothe, on the first Monday in the month of September next, to answer a bill in chancery exhibited against him by Eliza J. Carrington, administratrix of Edward Carrington, deceased, a citizen of the State of Virginia; and this he shall no wise omit, under the penalty of four hundred dollars, and have then there this writ. Witness the honorable John Marshall, Chief Justice of the United States, this third day of July, A. D. 1812, and of our independence the 36th.

Attest:

LYNE STERLING, *Clerk.*

Marshal's return, to wit: "Executed by leaving a copy of this writ, and also a copy of the bill, at the dwelling-house of the defendant, on the 27th day of August, 1812.

THOS. STEEL, *D. M.*"

And afterwards, to wit, at the September term of said court, in the year eighteen hundred and twelve aforesaid, this cause was continued. And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the months of September, October, November, and December, in the year aforesaid, until which time this cause was continued. And afterwards, to wit, at the January term of said court, in the year 1813, until which time this cause was continued upon rules, came the defendant, by Jacob Burnet, esquire, his counsel, and filed his answer herein, which is as follows, to wit:

The answer of Samuel G. Martin, defendant, to the bill of complaint of Eliza J. Carrington, administratrix of Edward Carrington, deceased, complainant.

This defendant now, and at all times, saving and reserving to himself all manner of benefit and advantage of exception to the many errors, imperfections, and defects, *of* the said bill of complaint contained, for answer thereto, or so much thereof as this defendant is advised to be material or necessary for him to answer unto, he answereth and saith: that he admits that a contract was entered into by and between the said Edward Carrington and this defendant, bearing date on or about the eleventh day of October, in the year of our Lord eighteen hundred and five, whereby it was stipulated that he, the said Carrington, should sell to this defendant two tracts of land situate on the waters of the Little Miami, in the State of Ohio, containing together twenty-three hundred and sixty-seven acres, at the price of one dollar and fifty cents per acre, to be paid according to the terms and stipulations in the said contract contained, to which contract this defendant also prays that a reference may be had. This defendant also admits and avers that he paid the first instalment in hand according to the tenor and effect of the contract. He also admits and avers, that, on or about the thirteenth day of March, eighteen hundred and seven, he paid to the said Edward the further sum of five hundred dollars on account of the said contract, as will appear by the

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receipt of the said Edward Carrington, which this defendant prays may be referred to, and taken as a part of this his answer. This defendant, in further answering, saith, that he has understood, and believes, that the said Edward hath departed this life without having annulled or in any manner altered the contract, agreement, or the terms thereof, and without leaving any last will and testament: he hath also been informed, and believes, that the complainant hath administered on the estate of the said Edward, but the defendant doth not know that the complainant is in any manner authorized to execute a deed for the lands mentioned in the contracts, or in any manner to carry the contracts into effect. The defendant is ignorant of the title vested in the said Edward in his life, and therefore cannot say whether it was in his power to execute the contract or not; and this defendant, in further answering, states, long before the bill of complaint, he had contracted with one Samuel McCray, of Lebanon, in the county of Warren, for the sale and transfer of all his right and title, both in law and in equity, to the premises in question, who undertook to execute the contract on the part of this defendant by paying the balance of the purchase money due thereon; and in pursuance of the aforesaid contract, this defendant did afterwards assign and transfer the articles of agreement between him and the said Edward Carrington, to the said Samuel McCray, and at the same time delivered over to him all the papers that were in the possession of this defendant relating to the said contract. This defendant doth not know what payment has since been made by McCray, or what arrangements have been made by him for satisfying the balance of the purchase money, but he hath been informed that the said McCray, since his contract with this defendant, made some arrangements in the State of Virginia for the purpose of raising funds for discharging the balance due on the contract; and this defendant denies all combination and confederacy wherewith he stands charged, without that that any other matter or thing in the complainant's said bill contained, material or necessary for him to answer unto, and not herein and hereby well and sufficicently unto, confessed, or avoided, traversed or denied, is true; all which matters and this defendant is ready to aver and prove as this honorable court shall award; and humbly prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

JACOB BURNET, *Attorney.*

Before me, subscriber, personally came Samuel G. Martin, before named, who, according to law, deposeth and saith that the several matters and things contained in the foregoing answer are just and true, according to the best of his knowledge, information, and belief.

SAMUEL G. MARTIN.

Sworn to, and subscribed before me, this fifth day of December, eighteen hundred and twelve.

JOSEPH PRICHARD, *J. P.*

And afterwards, to wit, rules held in the clerk's office of the court aforesaid, in the month of February, in the year eighteen hundred and thirteen aforesaid, came the defendant, by his counsel, and ruled the complainant to reply to his said answer. And afterwards, to wit, at the September term of said court, in the year aforesaid, until which time this cause was continued upon rules. And afterwards, to wit, at rules held in the year aforesaid, in vacation from September term, 1813, to January term, 1814, this cause was continued for replication. And afterwards, to wit, at the January term of said court, in the year eighteen hundred and fourteen, until which time this cause was continued upon rules. And afterwards, to wit, at rules held as aforesaid, in the year aforesaid, in vacation from January to September term, this cause was continued upon rules. And afterwards, to wit, at the September term of said court, until which time this cause was continued upon rules And afterwards, to wit, at rules held as aforesaid, in the clerk's office of the court aforesaid, in vacation from September, 1814, to January, 1815, this cause was continued. And afterwards, to wit, at the January term, eighteen hundred and fifteen, until which time this cause was continued upon rules, came the complainant, by her counsel, and filed her replication to the answer of the said defendant, which is as follows, to wit: The replication of Eliza J. Carrington, administratrix of Edward Carrington, deceased, complainant, to the answer of Samuel G. Martin, defendant. This repliant, saving and reserving to herself all manner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereto, saith that she avers and proves her said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient, to be replied unto by this repliant, without that that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct; and humbly prays as in and by said bill she hath already prayed.

HENRY BRUSH,
Counsel for Complainant.

And afterwards, to wit, at the September term of said court, in the year aforesaid, until which time this cause was continued, came the said complainant, by her counsel, and, by consent, this cause was submitted for the decision of the court, but the court not being sufficiently advised of and concerning the premises, took time, &c. And afterwards, to wit, at a continuation of the same term, the following decree was pronounced herein, to wit: This day came the parties, and the bill, answers, and exhibits, being seen and understood, the court this twelfth day of September, in the year of our Lord eighteen hundred and fifteen, doth order and decree that the complainant do recover of the defendant the sum of four thousand and six hundred and thirty-four dollars and fifteen cents and the costs:

and that unless the same be paid on or before the fifteenth day of November next ensuing, the premises in the bill mentioned, or so much thereof as will be sufficient to pay and satisfy this decree, interest, and costs, and costs of sale, be exposed at sale at auction, by the marshal of this district, at the door of this court-house, for the ready cash, to the highest and best bidder that he can obtain, for the highest and best price, to be applied to the payment of this decree, if so much shall be made; and, if not so much, then so far as the same may extend. Such sale to be advertised previous to the time thereof, five weeks successively, in some public newspaper printed in the town of Chillicothe; and it is adjudged, ordered, and decreed accordingly.

THE UNITED STATES OF AMERICA, *District of Ohio,* } *sct.*

I, Harvey D. Evans, clerk of the seventh circuit court of the United States, within and for the district of Ohio aforesaid, do certify the foregoing to be a true and correct transcript from the records in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Columbus, this tenth day of July, 1824, and in the 49th year of the American independence.

Attest:

[L. S.] HARVEY D. EVANS, *Clerk.*

Interlocutory decree.

And this cause coming on to be heard, on the bill, answer, replications, bills of revivor, and amended pleadings—testimony, exhibits, agreements of parties, and counsel, being fully heard, thereupon, the court are fully of the opinion that the law and equity of the case are with the complainant, and do order, adjudged, and decree, that the articles of agreement entered into 13th day of December, 1827, between Eliza J. Carrington and Jesse McKay, set forth in the bill of complaint, be, and the same are hereby cancelled, set aside, and annulled; and that the lands set forth in the bill of complaint that remain unpaid, to be delivered up to the said Joshua Yeo, administrator as aforesaid, to be cancelled, and be and the same are hereby set aside, cancelled, and annulled, and declared to be null, to all intents and purposes whatsoever; and it is further ordered, adjudged, and decreed, that the said Eliza J. Carrington pay to the said Joshua Yeo, administrator as aforesaid, the several sums of money received by the said Eliza J., in part payment on the said articles of agreement, and interest thereon, from the several times of the said payments, deducting therefrom the amount of the rents and profits received by the said Jesse McKay out of the said premises, specified in the said articles of agreements, with the interest on the said rents and profits. And it further ordered, that it be referred to Benjamin Hinkson, a special master commissioner, to take evidence of the amount of the aforesaid rents and profits, and interest thereon, and report to this court at the next term the amounts of the said payments made by Jesse McKay to Eliza J. Carrington, with interest, and the balance

between the said amounts of payments, and rents and profits, with interest. And it is further ordered, that the said Joshua Yeo, administrator as aforesaid, to be left at liberty to prosecute his remedies at law, if any he have, to recover the attorney's and counsel's fees, surveyor's fees, and all other fees and expenses incurred by the said Jesse McKay in prosecuting the suits at law mentioned in his bill, and continued over for the report of the master. And afterwards, to wit, at the December term of said court, in the year of our lord one thousand eight hundred and thirty, this cause was continued for report; and now, at this day, to wit, the second Monday of July, in the year of our lord one thousand eight hundred and thirty-one, being the time and place first herein aforesaid mentioned, come the parties by their counsel; and thereupon, Benjamin Hinkson, esquire, the commissioner heretofore appointed in this cause, filed his report as follows, to wit:

The United States' Seventh Circuit Court, and District of Ohio:

Report of Commissioner Hinkson.

JOSHUA YEO, administrator de bonis non of Jesse McKay, deceased, *vs.* ELIZA J. CARRINGTON. } *In Chancery.*

The special commissioner appointed in this cause, by order of said court, entered at the term of July, 1830, has attended to the duties assigned him by said reference, and now presents to the court here the following report, to wit:

The amount paid by Jesse McKay, deceased, to defendant, on the 13th December, 1817, as appears by a credit entered on the agreement of that date, signed by defendant - - - -	$1,000 00	
Add interest on the sum to 13th July, 1831, being 13 years and 7 months - -	815 00	
		$1,815 00
Amount paid by said McKay to defendant on 2d April, 1818, as appears by a credit endorsed on his bond, dated 12th December, 1817, herewith filed, marked No. 1	1,500 00	
Int. on the sum to 13th July, 1831, being 13 years and three months - -	1,171 35	
		2,671 35
Also, amount paid by said McKay to defendant on the 4th Feb. 1819, as appears by credit of that date endorsed on same bond	500 00	
Interest on the same to July 13th, 1831, being 12 years and 5 months - -	372 50	
		872 50
		$5,358 85

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From which deduct the amount, rents, and profits received by the said decedant, as proven by the deposition of George Bruce, et al., herewith returned as a part of report, viz. amount of rents received in 1823 - - - - - -	50 00	
Int. thereon, say for 8 years, up to this date	24 00	
		74 00
Difference in favor of complainant		$5,284 85

The commissioner feels at some loss to know how the deposition of George Bruce should be applied. It appears that somewhere about the sum of $25, received for rents, were paid him for services as agent, &c., in renting and collecting. If this were deducted from the amount received by McKay, the account would stand thus, to wit:

Amount, with interest, paid by Jesse McKay as above stated - - -		$5,358 85
From which deduct rents and profits received by McKay, including 1823 -	$25 00	
Interest thereon for 8 years to present time	12 00	
		37 00
Difference in favor of complainant		$5,321 85

All which is respectfully submitted. July 13th, 1831.

BEN AMIN HINKSON, *Commissioner*.

Commissioner's fees $12 00
Witnesses 1 50.

Exhibits referred to in report.

Article of agreement made and entered into this thirteenth day of December, in the year one thousand eight hundred and seventeen, between Elizabeth J. Carrington, of the city of Richmond, of the one part, and Jesse McKay, of Chillicothe, in the State of Ohio, of the other part. The said Elizabeth J. Carrington agrees to sell and convey to the said Jesse McKay two tracts of land lying in the State of Ohio, the one consisting of thirteen hundred and sixty-seven acres lying on the waters of the Little Miami river, being survey number 986 and 2433; the other consisting of one thousand acres lying also the waters of the Little Miami river, being survey 1367; which said tracts of land were sold under a decree of the circuit court of the United States for the district of Ohio, at which sale the said Elizabeth J. Carrington became the purchaser. The said decree was rendered in a suit brought by the said Elizabeth J. Carrington, administratrix, &c., of Edward Carrington, deceased, against Samuel G. Martin; and the said Jesse McKay agrees to pay for the land the sum of ten thousand one hundred and one dollars at the following periods, to wit: three thousand dollars immediately; three thousand five hundred and fifty dollars and fifty cents on the first day of January, one thousand eight hundred and nineteen; and the residue on the first day of January, in the year one thousand eight hundred and twenty. If he fails in making either payment, the said Elizabeth

J. Carrington to be at liberty to sell the said land in like manner as if this contract had not been made, and to retain the money due to her, and the expense of sale, out of the proceeds thereof, and to pay the residue of the money to the said Jesse McKay. But it is understood that the said Elizabeth J. Carrington is to proceed under this agreement to obtain a decree for the sale of the lands herein before mentioned, in like manner as if she had a mortgage to cover the payment of the purchase money.

ELIZA J. CARRINGTON, [SEAL.]
JESSE McKAY, [SEAL.]

Bonds are given for the payment of the purchase money, and one thousand dollars are paid Eliza J. Carrington.

Test: MARIA WILLIS,
JANETTA FISHER.

Know all men by these presents, that I, Jesse McKay, am held and firmly bound to Elizabeth J. Carrington, in the full and just sum of four thousand dollars; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. Witness my hand and seal, this 12th day of December, in the year eighteen hundred and seventeen.

The condition of the above obligation is such, that, if the above bound Jesse McKay do pay to Elizabeth J. Carrington the sum of two thousand dollars, on or before the first day of February, in the year eighteen hundred and eighteen, with interest from the eleventh day of this December, then the above obligation to be void, otherwise it is to remain in force.

JESSE McKAY, [SEAL.]

Test: MARIA WILLIS,
JANETTA FISHER,

Received April 2d, 1818, of Jesse McKay, one thousand five hundred dollars in part of the within bond.

ELIZA J. CARRINGTON.

$1500

Received of Jesse McKay five hundred dollars in full of the within bond. February 4, 1819.

ELIZA J. CARRINGTON.

The United States' Seventh Circuit Court, Ohio District.

JOSHUA YEO, administrator de bonis non of Jesse McKay, deceased,
vs.
ELIZA J. CARRINGTON. } *In Chancery.*

The deposition of Isaiah Morris, of lawful age, taken before me, the undersigned, master commissioner in chancery for said court, in the above cause, by virtue of an order thereof made at July

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term, 1830, on behalf of the defendant, at my office in Wilmington, on the 5th day of May, 1831, in the presence of the complainant, and the defendant, by Thomas Scott, esquire, his counsel. The said Isaiah Morris, being first duly sworn, deposeth and saith as follows:

Are you acquainted with the lands in controversy in this suit, to wit, one survey of 1000 acres, and the other of 1367, patented to Edward Carrington?

Answer. I am somewhat acquainted with those tracts of land.

Did you, in company with Jesse McKay, somewhere about the year 1818 or 1819, at the request of Walter Dunn, then of Chillicothe, go on to those lands in order to ascertain their value?

Answer. Sometime about the time Jesse McKay purchased the tracts of land above mentioned, I think, which I am under the impression was about the year 1817 or 1818, I did, at the request of Walter Dun, give my opinion as to the then value of those lands, and I am under the impression that I went on to both tracts in company with Jesse McKay, or on to lands which I understood to be the surveys above mentioned.

At the time to which you allude in your answer to the last question, were Abraham Hester, Vinyard, and others, claiming under Martin, in possession of 1367 acre tract? were Isaac Wilson and others, claiming under Martin also, at the same time in possession of the 1000 acre tract?

Answer. At that time, I believe Abraham Hester, William Vinard, and others, were in possession of the 1367 acre tract, and I understood Isaac Wilson resided on the 1000 acre tract: under whom they claimed, I do not certainly know, but have understood that they held or claimed under Martin.

What, in your opinion, is the present value of said tracts of land?

Answer. Not having seen all the land, I cannot with certainty form an opinion as to the real value of those tracts of land; but, judging from the price of lands in that neighborhood of those lands, I think the 1367 acre tract worth about three dollars per acre, and the tract of one thousand acres worth about four dollars per acre.

What is the annual cash value of the rents per acre of the improved lands in the two tracts in controversy?

Answer. I cannot state with certainty as to the value of the rents, but think improved lands in this part of the county, in good repair, rent for about one dollar per acre.

ISAIAH MORRIS.

Sworn and subscribed before me, on the 5th day of May, 1831.

B. HINKSON,
Master in Chancery.

The United States' Seventh Circuit Court, Ohio District.

JOSHUA YEO, administrator de bonis non of Jesse McKay, deceased, *vs.* ELIZA J. CARRINGTON. } *In Chancery.*

The deposition of Abraham Hester, of lawful age, taken before me, the undersigned, a special master commissioner of said court, by virtue of an order of said court made at July term, 1830, on behalf of the defendant, at my office in Wilmington, on the 5th day of May, 1831, in the presence of the complainant, and the defendant, by Thomas Scott, esq., her counsel. The said Abraham Hester, being first duly sworn, deposeth and saith as follows, to wit:

1st question by defendant's counsel. Are you acquainted with the two tracts of land—one of 1,000, and the other of 1,367⅛ acres, patented to Edward Carrington, situate in this county?

Answer. Yes, I have been on the lands mentioned.

2d. Do you know whether Jesse McKay, deceased, ever had possession of said tracts, or either, and which of them?

Answer. I have heard Mr. McKay say that he had bought those tracts. He served declarations of ejectment on me and others, and I left the premises, and I do not recollect who occupied afterwards.

3d. Are the lands above referred to improved? and, if so, be pleased to state the quantity of acres and other improvements that are on said tracts of land.

Answer. There were improvements on both tracts; on No. of entry, containing the 1,367 acres, a part of which I occupied, there were about 145 or 150 acres of cleared land. How much was improved on the other survey, I know not.

4th. What was the yearly value of the rent per acre of the cleared land, either in cash or produce?

Answer. I suppose the land would, by ordinary cultivation, produced not less than 40 bushels of corn per acre yearly; and corn has generally sold in this county for 12½ cents per bushel until the present year. And further saith not.

ABRAHAM HESTER.

The within deposition was taken, sworn to, and subscribed, before me, on the 5th day of May, 1831.

B. HINKSON,
Master in Chancery in said cause.

The United States' Seventh Circuit Court, Ohio District:

JOSHUA YEO, administrator de bonis non of Jesse McKay, deceased, *vs.* ELIZA J. CARRINGTON. } *In Chancery.*

Deposition of George Bruce, of lawful age, taken before me the undersigned, a special master commissioner of said court in this case, by virtue of an order of said court made at July term,

1830, on behalf of the defendant, at my office in Wilmington, on the 5th day of May, 1831, in the presence of the complainant, and the defendant, by Thomas Scott, esq., her counsel. The said George Bruce, being first duly sworn, deposeth and saith as follows, to wit: I am acquainted with both of the surveys in controversy, one of 1,367 acres on Todd's fork, and the other of one thousand acres, both in the county of Clinton; on the 1,367 acre tract, there is about one hundred and fifty acres cleared, fencing generally in bad order, and have been for a number of years; the improved land on the thousand acre tract, that is about 90 or 100 acres cleared, very much out of order. The land is good-worth from three to five dollars per acre; and, at this time, the usual rent in the neighborhood of these lands is generally one-third of the grain raised; the quantity yearly raised about thirty to forty bushels per acre; oats about the same. The average price *in* of each from 10 to 12½ cents per bushel. Were you a resident of the State of Virginia at the time when Jesse McKay went on to Richmond with a view of contracting with Mrs. Carrington for the purchase of the lands in question? and, if so, you will please to state whether you saw him when he was on his journey, and what he said respecting the lands in question.

Answer. I was in Virginia at the time Jesse McKay went on to Richmond with a view of contracting for the purchase of the lands in question. I also saw him on his return, and understood he had contracted for said lands. He represented the lands as very good, and made a conditional contract with Mr. Ridgway for the tract called the camp tract, on Todd's fork, or either of the tracts. After view, Mr. Ridgway was to have his choice at a price then stipulated, and was to have possession of the land at any time after viewing the land and making choice. I contracted with Mr. Ridgway for a part of the camp tract, and came to this State in the year eighteen hundred and nineteen, in the fall, with a view of settling on said land; but when I arrived, I found the lands in dispute between Eliza J. Carrington and Samuel G. Martin, and could not get possession in consequence of said suit not being determined, and the tenants under Martin would not give up the part I was to have. Some time after, I think in eighteen hundred and twenty, I went to Chillicothe to see Jesse McKay respecting the land at Chillicothe. Jesse McKay and Judge Scott requested me to try and get possession of said lands; and, after my return, I called on the tenants for possession; and Jonathan Seaman gave possession of his part, about twenty-five acres, and paid rent for two or three years; also, a small tenement of about seven or eight acres was also given up: who the tenant was is not now recollected. Some time after, Jesse McKay told me not to receive the rents if I held possession under him. I informed how I got possession as above stated; and nothing more was said on the subject. Shortly after, the camp tract, or a part, was sold for taxes, and I purchased, and afterwards sold to Jesse Wood, and held possession for him until the land was redeemed; and, since that time, no rent has been paid. The rents, before sold for taxes, were collected for Jesse McKay; and for Jesse Wood, after they were sold for taxes.

In what year was it that Jesse McKay told you not to receive the rents if you held possession under him?

Answer. I think in 1823, but not certain as to the time.

Were you present when the marshal of the district of Ohio delivered possession, under the writs of habere facias possessionem which issued on the judgments in the ejectment prosecuted in said circuit court by the lessee of Eliza J. and Edward Carrington, to recover from the tenants of Martin possession of the lands in question?

Answer. I was present when the deputy marshal called on the tenants, and they all agreed to become tenants, at will, to Eliza J. Carrington, for whom he took possession.

Was Jesse McKay also present? and, if so, what statements or arrangements did he make with said tenants respecting their continuing in the possession of said lands?

Answer. Jesse McKay was not present.

Was Jesse McKay present when the declaration in the aforesaid ejectment were served on tenants in possession under Martin?

Answer. He was present, and served the writs himself, I believe; and I went with him at his request. I afterwards served some notices on the tenants myself; at whose request I cannot say at this time.

Did he, at that time, make any, and, if any, what arrangements with said tenants respecting their continuing in the possession?

Answer. No; he made no arrangement with the tenants.

1st question by complainant. Did Jesse McKay ever get possession of the one thousand acre tract? and how much was the cash value of all the rents received by the said McKay from either of said tracts by you as his agent or otherwise?

Answer. He never obtained possession of the 1,000 acre tract, nor any part thereof. In my opinion, the cash value of such rents would not exceed 45 or 50 dollars, out of which he paid me something between twenty and thirty dollars for my agency, and some small cost bills which I had incurred as such agent.

2d question by defendant's counsel. At the time Jesse McKay served the declaration in ejectment, did you understand from him that his object was to gain the possession under his contract to enable him to sell the land?

Answer. At the time, he observed to me that these men (the tenants) had purchased under Samuel Martin; and *and* that there was no other chance of removing them from the possession. I already knew his contract, but do not remember that he said any thing with regard to selling the land.

What is the annual cash value of the rents per acre of the improved lands in the two tracts in controversy?

Answer. Improved land, in good repair, was worth about one dollar per acre; the fencing around the improved land in controversy were very much out of repair.

GEO. BRUCE.

Sworn to, and subscribed before me, on the 5th day of May, 1831.

B. HINKSON, *Master in Ch'y.*

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And thereupon, the said defendant, by her counsel, files in court here the following exceptions, to wit:

Seventh Circuit Court United States, District of Ohio:

ELIZA J. CARRINGTON, defendant, *vs.* YEO, administrator de bonis non of Jesse McKay, deceased, complainant. } *In Chancery. Exceptions to Master's report.*

The defendant excepts to the master's report as follows: Exceptions to report.

1st. No allowance is made by him for the rents and profits of the land in possession of McKay, except for the year 1822, whereas, from the proof, it is apparent that an allowance for rents and profits ought to have been made for the year 1820, 1821, and 1822, as well as for the year 1823.

2d. The commissioner has not reported what was a reasonable annual rent for the land during the whole period it was in the possession of McKay, but only the actual amount the rents received by McKay for the year 1823.

3d. The defendant also excepts to said report on account of matter not appearing on the face of said report, and which said commissioner was request to insert in said report; which matter the undersigned is ready to verify on oath, if the same be controverted; and which is as follows, to wit:

On yesterday, the undersigned, as counsel for the defendant, called on the commissioner in order to examine some of the papers in this cause, which he had been informed by the clerk were then in the possession of the commissioner; and in order, also, to ascertain whether the commissioner had completed his report. The commissioner informed the undersigned that he had not completed his report, but that he should be able, he presumed, to complete it in the course of the day. The commissioner then handed to the undersigned a small bundle of papers which, he said, had been handed him by Mr. Yeo, the plaintiff in this cause, with a view of having them included or referred to in said report. He said he had not examined them, and could not therefore state whether he could, with propriety, either insert them, or refer to them in said report; or, that the following is undersigned I verily believe, as exact copies of such of those papers as I deem to be connected with the other facts, important evidence for the defendant on the final hearing of this cause, viz. 1st.

Copy of a letter sent by Jesse McKay from Mrs. Carrington to Walter Dunn, and which bears date the same day on which the contract between Jesse McKay and Mrs. Carrington was executed, to wit:

RICHMOND, *December* 13, 1817.

DEAR SIR: Your favor of the last month I have received by Mr. McKay, with whom I have formally ratified the bargain you were good enough to make for me, with some little variation as to the payment, which, in my peculiar situation, seemed unavoid-

able. I herewith enclose you the list of my late husband's heirs. I must request you to attend to the institution of a suit in your State, to be brought against them, so as to insure Mr. McKay's title to the land. It would seem that I never should be done troubling you with my business; but when you reflect upon the great advantage I have had in having it in my power to call upon you, you will be ready to excuse me. Mr. McKay has my permission to take immediate possession of the lands, though he seems to think there may be some difficulty attending it. Whenever a good opportunity presents itself for disposing of the Hockhocking lots of land, which I purchased, I shall be glad to sell them, but had rather delay a little so as to sell them to advantage.

With great and sincere gratitude for all your attentions,

I am, sir,

Your obedient servant,

(Signed,) ELIZA J. CARRINGTON.

Directed to WALTER DUNN, Esq., "Mr. McKay," Chillicothe.

The said letter is endorsed in the handwriting of Mr. Dunn as follows, to wit: 1817.—Eliza J. Carrington, December 13, 1817.—List of E. Carrington's heirs.

Copy of a letter from Mr. Harrison to McKay:

RICHMOND, *April* 16, '19.

DEAR SIR: At the request of Mrs. Carrington, to whom you addressed a letter, dated March 25th, including a list of the heirs of Edward Carrington, and requesting certain information respecting them, I enclose to you a copy of said list, exhibiting answers to the several queries on the back of the old list, which I think will be found entirely satisfactory with regard to the persons in possession of the land in dispute. I am instructed to say that Mrs. C. wishes you to have them removed by the power of the law, if it cannot be done without; and as to Hockhocking lands, it is her wish that it be not sold at present. Mrs. Carrington is too much indisposed to write; but I hope, sir, you will find this a sufficient answer to your letter.

Respectfully, your obedient servant,

(Signed,) CARTER H. HARRISON.

Directed to JESSE MCKAY, Chillicothe, Ohio—post marked, Richmond, Virginia, April 16.—And on said letter is endorsed in the handwriting of Mr. McKay as follows: "Carter Harrison—letter for Mrs. Carrington, April 16, 1819."

Copy of letter from Mrs. Carrington to McKay:

RICHMOND, *August* 20, 1820.

Mr. MCKAY—SIR: I received yours of the 9th instant, dated from Winchester, which I have no time in reply to, and should certainly have complied with my promise of answering fully yours written from this place, had I not waited some time for the arrival of Mr. Dunn, whom I wished to consult fully on the subject, he being well acquainted with the whole business between

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you and myself. It was agreed between Mr. Marshall and Mr. Dunn that the business should progress, as it relates to me, in such a way as should leave no difficulty as to secure your title to the land sold you; and that every steps should be taken to effect it. The delay appears to have arisen from some trifling information that can soon be obviated. Mr. Dunn is fully authorized to act for me in this business, and I have no doubt it will soon be adjusted to our mutual satisfaction.

I am, sir, with regard,
Your obedient,
(Signed,) ELIZA J. CARRINGTON.

Directed to JESSE McKAY, Esq., Chillicothe, Ohio—post marked. Richmond, Virginia, August 24th.

A letter from Mrs. Carrington to McKay:

DEAR SIR: The information you gave me in your note of this morning, had reached me first in a letter from my attorney, Mr. Scott, and, afterwards, in one from my friend Mr. Dunn. A copy of your bill was promised; and, until it was received, nothing could be done at present. I must decline receiving any proposition, because Mr. Harrison is out of town, and my brother, Mr. Marshall, is not well. As soon as I can see either of them, I will take their advice, and you shall hear further from me.

I am, sir, with respect,
Your obedient,
(Signed,) ELIZA J. CARRINGTON.

Directed to Mr. JESSE McKAY, present. And on said letter is endorsed, in the handwriting of Jesse McKay, as follows: "E. J. Carrington's letter, 1823, March."

The letters to which the foregoing purport to be copies, the undersigned knows to be genuine. The first, third, and fourth, are in the handwriting of Mrs. Carrington, and the second is in the handwriting of Mr. Harrison, (the particular and confidential friend of,) and who is husband to one of the heirs of Mrs. Carrington. The undersigned knows the letter to be genuine, because he has long held a correspondence in writing on business, both with Mrs. Carrington and Mr. Harrison. The undersigned says he never knew that the foregoing evidence was in existence until yesterday; nor does he believe that Mrs. Carrington knew that such letters had been preserved, and could be produced as evidence in her behalf. After reading and copying the foregoing, and certain receipts, &c. handed the commissioner, the undersigned requested said commissioner to insert them in his report, and, as a part of his return, that the defendant might have the benefit of the evidence (which they furnished her,) on the final hearing of this cause. The said commissioner answered, as before, that, as he had not yet examined those papers, he was not certain whether he could, with propriety, insert them, or refer to them as part of his report or not. Since making out his return, the said commissioner informed the

undersigned that he did not feel authorized to make said papers a part of his return, and had, consequently, as the undersigned understood, returned them to Mr. Yeo, the plaintiff.

As connected with the foregoing, should the report here excepted to, and the interlocutory decree heretofore pronounced in this cause, be set aside, and the defendant be at liberty to adduce new testimony, the undersigned has been informed, and verily believes that the defendant can indisputably establish the additional facts following: 1st. That McKay, before he contracted with Mrs. Carrington for the purchase of the lands in question, examined each tract in order to ascertain its quality and value. 2d. That, previous to his contract, he ascertained that the tenants in possession held under Samuel G. Martin. 3d. That McKay knew, at the time of his contracting with Mrs. Carrington, that she had nothing more than an equitable title to said lands. 4th. That the value of said lands was ascertained by a person mutually agreed upon between himself and W. Dunn, Mrs. Carrington's agent, before he contracted with Mrs. Carrington. 5th. That Mrs. Carrington never saw said lands. 6th. That he contracted with his eyes open, depending on his own judgment, and the judgment of others (not Mrs. Carrington) forthe title and the value of those lands. 7th. That the present value of the lands are equal, or nearly equal, to what he contracted to pay for them. 8th. That he procured from Mrs. Carrington the names of the heirs of Edward Carrington, with the sole view of prosecuting a suit, in order to obtain from them the legal title to said lands. 9th. That, between the 16th of April and the 20th of August, 1819, he employed counsel to prosecute ejectments against the tenants who claimed under Martin; that only one count was inserted in said declaration in ejectment, and that was on the demise of Eliza J. Carrington only. That the counsel, after examining the title papers, informed Mr. McKay that Mrs. Carrington's title was only equitable, but that, possibly, they might be able to succeed as against Martin, and those claiming under him. That, after those ejectments had been pending some months, said counsel, fearing that he might fail on the demise of Mrs. Carrington, whose title was only equitable, did, the approbation of Mr. McKay at January term, eighteen hundred and twenty, obtain leave to amend said declaration, by inserting an additional count on the demise of the said Edward Carrington, deceased, in his life time; and, at June rules, said declarations were accordingly amended. 10th. That it was perfectly understood by Mr. McKay, and so stated to him from time to time, that Mrs. Carrington's title was merely equitable. 11th. That Mr. McKay, from the time he employed counsel in eighteen hundred and nineteen, to prosecute the aforesaid ejectment, until within a few days before he filed his bill against Mrs. Carrington, in April, 1821, never as the undersigned believes, gave the least intimation to either Mrs. Carrington or her counsel, that he had any desire to be off from the contract. 12th. That Mr. McKay exercised acts of ownership over parts of the property, and received the rents and profits from 1820 to 1823. 13th. That the foregoing letters were placed in the hands

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of, or received by, Mr. McKay shortly after they were written, and found amongst his papers since his decease; and, 14th. The undersigned is also impressed with the belief that they shall be able to produce at the hearing, the letters written by Mr. McKay referred to in the foregoing correspondence, which will more fully illustrate and explain the correspondence. The undersigned further states that the greater part of the matters and things prepared to be proved, have come to his knowledge since the last adjournment of this cause; and he believes Mrs. Carrington is yet entirely uninformed as to the most of them. The undersigned further states that he has, since the last adjournment of this court, been informed, in a letter from Mrs. Carrington, that the infant defendant, named in the bill filed in the Clinton common pleas, by Mrs. Carrington, against the heirs of Edward Carrington, in order to obtain a decree for a conveyance to her for the legal title to the lands in question, has departed this life intestate, unmarried, without legal issue, and under age; and that the other defendants named in said bill are his sole heirs and heiresses at law, so that the title of Mrs. Carrington to the lands in question, if it were before doubtful, is now clear of doubt, perfect, and complete. The undersigned feels he should be wanting in duty to his client, whose interest he is bound, by the most sacred obligation, to guard, were he to wait making this application, which, he says, is not for delay, but further obtainment of justice. He therefore prays that the report herein *accepted* to, and the interlocutory decree pronounced herein at a previous term of this court, may be set aside and held for naught; and that the defendant may be permitted to introduce new evidence in this cause.

THOMAS SCOTT,
July 18, 1831. *Counsel for Def't.*

Exceptions overruled.

The petition and motion for a rehearing in this cause is overruled; and it coming on to be heard on exceptions filed to the report of the master, Benjamin Hinkson, esq., made in this cause, and the same being fully heard, the court now here do overrule the said exceptions, and do order, adjudge, and decree, that the report of the said master be, and the same is hereby confirmed. The court allowing the sum of seventy-four dollars for the rents and profits of the premises mentioned in the article of agreement specified in the bill as received by the said McKay, in his life time, therein, including the interest thereon It is therefore ordered, adjudged, and decreed, by the court now here, that the said Eliza J. Carrington pay to the said Joshua Yeo, as administrator as aforesaid of the said Jesse McKay, deceased, the sum of five thousand and two hundred eighty-four dollars and eighty-five cents, (5,284 85) within sixty days, together with interest thereon until paid; and, on failure thereof, that execution issue therefor, and for costs, against defendants.

Decree.

And thereupon, the said parties, by their counsel, file in court here the following agreement, to wit:

Seventh Circuit Court of the United States, District of Ohio, July Term, 1831.

JOSHUA YEO, administratorde bonis non of Jesse McKay, deceased, compl't,
vs.
ELIZA J. CARRINGTON, defendant.
} *In Chancery.*

Agreement of parties.

In this case it is agreed that Edward Carrington, deceased, in the complainant's bill named, had, on the eleventh day of October, A. D. 1805, patents from the United States for the two tracts of land, one of 1,000 acres, and the other of 1,367, situate in Clinton county, in the State aforesaid, set forth in complainant's bill; and that, on the said eleventh day of October, 1805, the said Edward Carrington, then of the city of Richmond, contracted with Samuel G. Martin, of the State of Ohio, for the sale and conveyance thereof, in the words and figures following, to wit:

Articles of agreement between Edward Carrington, of the city of Richmond, on the one part, and Samuel G. Martin, of the State of Ohio, of the other part, entered into this 11th day of October, 1805, viz. The said Carrington sells to the said Martin two tracts of land, situated on the waters of the Little Miami river, in the State of Ohio, surveyed in the name of said Carrington, distinguished on the books of Richard C. Anderson, surveyor, by numbers 986 and 2,433, 1,367 acres; and number 1367, 1,000 acres being, in the whole, two thousand three hundred and sixty-seven acres, (more or less,) at the price of one dollar and fifty cents per acre, amounting to three thousand five hundred and fifty dollars and fifty cents, to be paid by said Martin, his heirs, executors, or administrators, as follows, to wit: Fifty dollars in hand; one thousand dollars on or before the first of May next, and the remaining balance on or before the first of May, 1807: the said Carrington, his heirs, &c. &c., to retain the title in all the lands until the purchase money shall be fully paid, them to convey, in fee simple, with a special warranty, by the said Carrington and his heirs, and all persons claiming by, from, or under him or them. And it is further agreed that, should there be a failure on the part of said Martin, his heirs, executors, or administrators, in payment at any one of the periods stipulated, it shall be at the option of the said Carrington, his heirs, executors, or administrators, at any time thereafter, to annul the bargain, by giving notice thereof, and paying unto the Bank of Virginia, on account of said Martin, his heirs, &c. &c., any sum or sums of money, without interest, which may have been paid on account of said purchase. In witness whereof, the said parties have hereto set their hands and seals, on the day within written.

(Signed,) E. CARRINGTON, [L. S.]
(Signed,) SAMUEL G. MARTIN. [L. S.]

In presence of—

ROBERT DOLLARD,
JOHN FOX.

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On which contract are endorsed the following payments, to wit:

Received of Samuel G. Martin fifty dollars, on account of the within contract.

(Signed,) E. CARRINGTON.

Received, March 1, 1807, of Samuel G. Martin, on account of the within contract, five hundred dollars.

(Signed,) E. CARRINGTON.

There is also endorsed on said contract, as follows: "Loaned to Samuel G. Martin thirty dollars." It is agreed that Edward Carrington died in October, in 1810: no conveyance having been made to Martin. It is agreed that in July, 1812, a bill in chancery, made a part of this case, and marked B, was filed by the defendant in this cause, the said Eliza J Carrington, as administratrix of her deceased husband, the said Edward Carrington, deceased, against the said Samuel G. Martin, in the seventh circuit court of the United States, district of Ohio, charging that the balance of the purchase money, due by said Martin for the lands, described in the contract between him and the said Edward Carrington, was still due and unpaid; and praying that he be decreed to pay the balance by a day to be named in the decree; or that his equitable title in said lands, or so much thereof as necessary for that purpose, might be sold to satisfy the balance of the purchase money thus due, with the interest and costs of suit. That the said Samuel G. Martin appeared and answered said bill. That the complainant replied. That depositions were taken; and, at the September term of said court, in the year of our Lord 1805, a decree was entered, "that the complainant recover of the defendant $4634 $\frac{15}{100}$ dollars, and the costs; and that, unless the same be paid on or before the fifteenth day of November next ensuing, the premises, in the bill mentioned, or so much thereof as will be sufficient to pay and satisfy the decree, interest and costs, and costs of sales, be exposed to sale at auction by the marshal of this district, at the door of the court-house, for the ready cash, to the highest and best bidder that he can obtain, for the highest and best price, to be applied to the payment of this decree, &c. It is agreed that the money specified in said decree, nor any part thereof, was paid by Martin; that an execution issued on said decree, which was levied on the lands in the complainant's bill named; that sales, not having been effected on the first writ, a vendi exponas issued; under which, after giving legal notice of the time and place of sale, the same was, pursuant to said notice, exposed to sale, at public auction, on the 6th January, 1827; that the defendant, the said Eliza J. Carrington, bid for the said lands the sum of five thousand and four dollars and eighty-eight cents, the same being the balance of the purchase money due by Martin, with interest, costs, and costs of sale; and no person bidding therefor a greater or as great a sum of money, the same lands were struck off to her for that sum, and she was declared to be the purchaser; and that, on the said day of January, in the year eighteen hundred and seventeen, the marshal of the district of Ohio afore-

said, pursuant to the order and decree of said circuit court, executed and delivered to the defendant, the said Eliza J. Carrington, a deed of conveyance for the same; which deed has been duly witnessed, acknowledged, and recorded. It is agreed that, on the 22d July, 1819, actions of ejectment, in the name of John Stites, ex. dem. of Eliza J. Carrington vs. Thomas Nokes, the casual ejector, were commenced in the seventh circuit court of the United States, district of Ohio aforesaid, in order to recover from the tenants, under said Samuel G. Martin, possession of the two tracts of land in question; and that the declaration, and notice appended thereto, were served by the said Jesse McKay on the tenants in possession. The tenants in possession under Martin were made defendants in said actions of ejectment; that judgments were, at September term of said circuit court, 1823, obtained by the plainffs against the defendants in said actions of ejectment.

THOMAS SCOTT.
T. EWING.

And in the fall of the said year, 1823, the said Eliza J. Carrington, by the marshal, put into possession of said two tracts of land, in pursuance of the writs of habere which issued on said judgments in ejectment.

It is agreed that the record of the suit in chancery, prosecuted by the said Eliza J. Carrington vs. certain persons charged to be the co heirs of Edward Carrington, deceased, for the purpose of recovering a decree for a conveyance of the legal title to the lands in question, endorsed as follows, to wit: A. Clinton county common pleas. Eliza J. Carrington vs. the co-heirs of Edward Carrington, deceased, in chancery. Transcript A. As also the record, marked B, in the cause of Eliza J. Carrington vs. Samuel G. Martin, in the United States' circuit court, district Ohio; of and both agreed, by their counsel in this case, shall be considered a part of the record in this cause, in the same manner as if they were regularly copied into the record or transcript made out on the appeal this day taken to the Supreme Court of the United States.

See exhibit A, page 12.

See exhibit B, page 46.

THOMAS SCOTT,
for Appellant.
T. EWING,
for Appellee.

Notice and allowance of appeal.

On motion of defendant, by Mr. Scott, her counsel, an appeal is allowed to the Supreme Court of the United States, according to the act of Congress in such case made and provided, on condition that the said defendant file a bond in sufficient bail, in the sum of two hundred dollars. And afterwards, to wit, on the twenty-eighth of July, eighteen hundred and thirty one, the defendant filed in the clerk's office of the court aforesaid, the following bond, to wit:

Appeal bond.

Know all men by these presents, that we, Eliza J. Carrington and Robert Dunn, are held and firmly bound unto Joshua Yeo, administrator de bonis non of Jesse McKay, deceased, in the sum of two hundred dollars, lawful money of the United States; for

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the payment whereof we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 21st day of July, A. D. 1831.

Whereas, at the July term of the United States' circuit court within and for the seventh circuit and district of Ohio, in the year A. D. 1831, upon the hearing and consideration of a certain suit in chancery pending in said court, wherein the said Joshua Yeo, administrator de bonis non of Jesse McKay, deceased, is complainant, and Eliza J. Carrington, defendant, it was, by said court, ordered that the petition and motion for a rehearing should be overruled, &c.; and it was, among other things, further ordered and decreed by the said court, that the said Eliza J. Carrington should pay to the said Joshua Yeo, administrator, de bonis non of Jesse McKay, deceased, the sum of five thousand two hundred eighty-four dollars and eighty-five cents, within sixty days, together with interest thereon until paid; and on failure thereof, that execution issue therefor, and costs, &c. From which said decree, the said Eliza J. Carrington prayed, and was allowed, an appeal to the Supreme Court of the United States, pursuant to the act of Congress in such case made and provided. All of which will more fully and at large appear by reference being had to the proceedings of said circuit court in said cause. Now, therefore, this obligation is such, that if a decree shall be entered in the Supreme Court aforesaid against the said Eliza J. Carrington, that she will abide the said decree; and that she or the said Robert Dunn shall faithfully pay off and discharge all costs that shall be adjudged or decreed against the said Eliza J. Carrington in the matter aforesaid; then this obligation to be null and void, otherwise to be and remain in full force and virtue in law.

For ELIZA J. CARRINGTON, [SEAL.]
By Thomas Scott, her Attorney at Law.
ROBERT DUNN, [SEAL.]

Witness present—
WM. KEY BOND.

THE UNITED STATES OF AMERICA, *District of Ohio, sct.*

I, William Miner, clerk of the seventh circuit court of the United States, in and for the district of Ohio aforesaid, do hereby certify the foregoing to be a true transcript of the record and proceedings of a suit in chancery lately determined in said court, wherein Joshua Yeo, administrator de bonis non of Jesse McKay, deceased, was complainant, and Eliza J. Carrington, defendant, as the same remains on record in my office.

In testimony whereof, I have hereunto set my name, and affixed the seal of said court, at Columbus, the 23d day of December, Anno Domini 1831, and of the American independence the 56th.
[L. S.]

WILLIAM MINER, *Clerk.*

[This transcript bond on appeal $48 00.]

Seventh Circuit Court U. S. Ohio District:

ELIZA J. CARRINGTON, *ads.* JESSE McKAY. } *In Chancery.*

The bill charges that, on the 13th December, 1817, complainant and defendant entered into a written agreement, in which the defendant agreed to sell to complainant two tracts of land lying in the State of Ohio; the one consisting of 1367 acres, lying on the waters of the Little Miami river, and being survey No. 986 and 2433; the other consisting of 1000 acres, lying on the waters of the Little Miami river, being survey No. 1367; which said tract of land was sold under a decree of the circuit court of the United States for the district of Ohio, at which the defendant become the purchaser. The said decree was rendered in a suit brought by the said defendant, administrator, &c. of Edward Carrington, deceased, against Samuel G. Martin; and complainant agreed to pay for said land the sum of $10.101 00, at the following periods, to wit: $3,000 immediately; $3,550 50 on 1st January, 1819; and the residue 1st January, 1820. If complainant failed in making either payment, the defendant to be at liberty to sell the said land in like manner as if contract had not been made, and to retain the money due to her, and the expense of sale, out of the proceeds thereof, and to pay the residue of the money to the complainant. But it was provided and understood that the defendant was to proceed, under the agreement to obtain a decree for the sale of the land herein before mentioned, in like manner as if she had received a mortgage to secure the payment of the purchase money; which contract being signed and sealed by the parties, is referred to as part of complainant's bill. On 12th December, 1817, complainant executed to defendant his bond for the payment of $2000 on or before 1st February, 1818; this, the first instalment, which has been paid; in addition to this, complainant has paid defendant $1000. In consequence of the silence of the written contract as to the delivery of possession, complainant procured from defendant an authority, in writing, empowering him to take possession immediately; which authority has been void, as the land is occupied by persons who claim to hold under a higher and paramount authority, and refuse to deliver possession to complainant. And in consequence of complainant's inability to get possession of the land peaceably and by entry, and, still more, in consequence of his inability to maintain and assert his right at law, has been able to derive no benefit or advantage from the aforesaid original agreement, or from the subsequent authority in writing. That Edward Carrington, deceased, of whom defendant is administrator, bargained and sold to Samuel G. Martin the whole of the premises included in the above original agreement; that said Edward died intestate, and the defendant procured a decree in the circuit court, &c., for the sale of said land, to satisfy the payment of the purchase money due from Martin; and the marshal executed to defendant a deed for said land, she being the highest bidder. Edward Carrington died, leaving several heirs to whom the fee and

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the legal title to the said land have descended; and that thus the defendant was unauthorized to sell to complainant, and is unable to make a conveyance to him of the legal estate; in violation of the solemn agreement entered into with complainant, to the irreparable injury of complainant's interest. That defendant has pursued no measures to compel a conveyance of the legal title from the heirs of Edward Carrington, deceased; and that there is no hope, or reasonable propect, that defendant will ever be able to procure a conveyance. That, by direction or express approbation of the defendant, he has defrayed for her, out of his own purse, a variety of expenses incident to suits which she has commenced in the circuit court U. S., district of Ohio, for the purpose of perfecting the legal title to the land which she sold to him, to wit, $324: refers to vouchers, and prays defendant may be decreed to reimburse him this last mentioned sum, in addition to the $3000, with interest, which he has paid on the land; and that the equitable title which the defendant has to the lands, may be charged with the payment of it. Bill prays a decree that the contract aforesaid, between them, may be rescinded, and declared to be of no binding force and obligation; that the money, with interest, which he has already paid, be decreed to be reimbursed to him, and that the equitable interest she holds in the said lands be charged with the payment of it; that his obligation, which she now holds, for the payment of the residue of the purchase money, be delivered up to be called, and that, until the same be delivered up, she be prohibited from parting with them; also for general relief, &c.

The Defendant's Answer.

She admits the contract between the complainant and herself for the sale of the land in the bill mentioned, which she believes to be truly stated in the bill; but, for greater certainty, prays that the copy, which she presumes is still in the possession of the plaintiff or his attorney, may be laid before the court. She says that all the facts stated in the contract respecting the land are, to the best of her knowledge, strictly true. That the plaintiff, who, as she understands, was then, and still is, a citizen and resident of the State of Ohio, appeared at the time of the contract to be perfectly acquainted with the circumstances of the property; and, being possessed of that knowledge, came to Richmond for the purpose of making the purchase. No inducement of any kind was held out to him, nor was any representation made to him by her. He relied upon his own knowledge, and purchased on it. A part of the knowledge was, that the land wasin possession of Samuel Martin and others, who entered into possession under a contract made by Col. Edward Carrington, in his life time. It was on this contract that the suit was instituted in which the decree was made, which is referred to in the transaction between the plaintiff and herself. The claims of the persons in possession, whatever they may be, were as well known to the plaintiff as herself. Those claims, as she is informed and believes, have been decided against those who hold still the possession of the land; but, for this, she

refers to the proceedings which she presumes have taken place thereon in court. She admits the payment of the bond, and of the $1000 in the bill mentioned; which sums have been paid to, and received by, the heirs and distributees of Col. Carrington; but she does not admit of any further payment, nor did she ever request or authorize the plaintiff to make advances to her. She is, however, willing to allow what may, in justice, be claimed in the final settlement. She has not proceeded to coerce the payment of that part of the purchase money which remains unpaid, and admits, if there were any conflicting hostile title which could be sustained, the plaintiff would be entitled to the interposition and aid of a court of equity; but humbly contends that there is no such conflicting hostile title. That possession is withheld wrongfully by persons whose possession and claims were, as she believes, known to the plaintiff at the time of the purchase, and that the means of obtaining that possession are unquestionable. The heirs of Colonel Carrington, who have received a part of the purchase money, will, as she is entirely satisfied, bring an ejectment farther for the property if the use of their names be necessary; and she humbly contends that, there being no defects in the title, and the delay in giving possession being not her fault, but growing out of circumstances known to the plaintiff at the time of his purchase, can furnish no ground for setting aside the contract. She denies all fraud, &c.

To this answers the plaintiff put in a general replication.

At January 10, 1825, the defendant, by leave of the court, filed an amendment to her answer, in which she states that, at the time of her entering into the contract with complainant, he had correct information of the nature of the title which she held to the land. That, on discovering that Samuel G. Martin, and others claiming under him, would not yield possession to the complainant under his contract with her, notwithstanding the right of the said Samuel, and those claiming under him, had been extinguished by the sale and conveyance made to her by the marshal of the district, pursuant to the decree of the court, she immediately caused ejectments to be prosecuted against the said Samuel, and those claiming under him, and obtained judgments thereon in her favor; on which judgments writs of habere facias possessionem have issued, and the said Samuel G. Martin, and those claiming under him, have been turned out of possession. She refers to those records and proceedings as a part of her answer. That, immediately after entering into the contract with the complainant, he, the said complainant, obtained possession of parts of the land so as aforesaid contracted to be sold and conveyed to him, and has ever since been in the receipts of the rents and profits. Since recovering possession of residue of said lands, contracted to be conveyed to the complainant, she, by her attorney, tendered possession thereof to the complainant, and offered to put him into quiet possession, which he refused to accept. That the heirs of her deceased husband, Col. Edward Carrington, were numerous, and resided in distant parts of the United States, so that she was compelled to expend considerable sums of money

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and labor before she was enabled to ascertain all their names and places of residence, in order to make them parties to a bill in equity, and a tain from them a decree vesting in her complete legal title to the lands in question. That, so soon as she had thus ascertained the names and places of said heirs, she caused a bill in equity to be filed against them in the court of common pleas of Clinton county, in this State, in which county the lands are situated; and such proceedings were had thereon, that, at the last August term of said court, the said cause came on to be heard, and a final decree pronounced thereon in her favor, and against said heirs. By virtue of which said proceedings and decree, she is advised, and so charges the fact to be, that she is invested with a complete legal as well as equitable title to the lands by her contracted to be conveyed to the complainant. To a duly authenticated copy of said proceedings and decree, filed with this amendment, she prays reference as part thereof. She is now ready and willing to convey the lands contracted for to the complainant, on the receipt of the balance of the purchase money. And as she has been guilty of no fraud, but in all things acted in good faith towards the complainant, she prays that his bill may be dismissed, &c.

Testimony on behalf of Complainant.

Daniel Ratcliff deposes that he is acquainted with two tracts of land, one of which is No. 986 and 2433, for 1367 acres, entered in the name of Edward Carrington, and is now said to belong to Eliza J. Carrington; the other is No. 1367, for 1000 acres, entered in the name of said Edward Carrington, and now said to belong to Eliza J. Carrington—both tracts lying in Clinton county; and that he is of opinion that the 1367 acres were worth, or might have been sold for $3 or $3 50 per acre, in the year 1817 and 1818; and is of opinion that land in the neighborhood of said tract has depreciated in value at least one-third, and is also of opinion that said tract would not sell for more than 2 dollars or 2 dollars 50 cents per acre, taking the whole tract together. The other tract of 1000 acres, No. 1367, he is of opinion was worth, in 1817, about 5 or 6 dollars per acre; and is also of opinion that said tract would not sell at this time for more than 3 dollars or 3 dollars 50 cents per acre.

John A. Hays deposes that he is acquainted with two tracts of land, one of which is No. 986 and 2433, 1367 acres; and the other, No. 1357, of 1000 acres, as he has understood, belonged to Eliza J. Carrington, and was purchased by Jesse McKay some years past. Being acquainted with the land, and in the neighborhood, he is of opinion that the land No. 986 and 2433, 1367 acres, is not worth more than 2 dollars or 2 dollars 25 cents per acre; and No. 1367, of 1000 acres, is not worth more, at this time, than 3 dollars or 3 dollars 25 cents per acre.

Notice has been filed that the reading of these depositions will be opposed, because they were taken neither pursuant to the act of Congress, or the rules of the court: no dedimus, no notice, and no proper certificate, &c.

John A. Fulton deposes that he has, for many years, been acquainted with Jesse McKay. Jesse has been in the habit of buying and selling land, and it has been his business in Ohio. Deponent is acquainted with the business of buying and selling land. It is all important for purchasers, in such cases, to get possession of lands as soon as possible, as without it no sales can be made to any advantage, unless to persons well acquainted with the title, or to speculators. Farmers and men lately come to the country would not *not* purchase. Deponent thinks land speculators would not consider themselves bound: deponent would not consider himself bound, and does not suppose any one would who understands his business. Deponent is not particularly acquainted with survey No. 2433 and 986, and also with survey No. 1367; but is acquainted with the lands in the neighborhood, and where the surveys are. Land in that neighborhood depreciated between the years 1805 and 1811, but how much he cannot say.

Cadwallader Wallace deposes that he is, and has been, acquainted with Jesse McKay ever since 1809 or 1810; that most of the time Mr. McKay has been in the habit of buying lands for the purpose of retailing them; that it is all important for land purchasers, in such cases, to get immediate possession. Deponent has been engaged in the land business for a number of years.

Walter Dun deposes that he was Mrs. Carrington's agent in the prosecution of some suits for her benefit as administratrix of Edward Carrington, deceased; but that he was not, in his opinion, and to his recollection, formally and fully authorized by her, in her own right, to sell any of her lands in the State of Ohio, but was merely requested by her to do so in some of her letters to him, as he at present thinks. That, in pursuance of her said request, he did agree, verbally, with Jesse McKay for her two tracts of lands, which he had purchased at marshal's sale, by virtue of a decree of said court in her favor, as administratrix as aforesaid, against one Martin, and referred said McKay to the said Mrs. Carrington to have the verbal agreement reduced to writing. He believed, at the time, that Mrs. Carrington had not the legal title to the land, and is under the impression that he so advised Mrs. Carrington; but he thought that the title could easily be perfected. He understood that purchasers from one Martin were in possession of the land at the time complainant purchased, and were unlawfully in the possession; and that he understands actions in ejectments are still pending against some of them for the possession of these lands. Since the time of the sale to McKay, he has had no knowledge of the said lands; but, from the general depreciation of lands in the western country, he has very little doubt but that the said lands have depreciated.

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Walter Dun, in his second deposition, deposes, in substance, the same as in his former, with this and some other additions: that he is not certain, but is impressed with the belief, that, while he was negotiating the sale with the complainant Jesse, as stated above, he did inform the said Jesse that the purchasers under said Martin were still in possession of the land.

Thomas Scott deposes, that he, as attorney for the defendant, Eliza J. Carrington, did, after obtaining possession for her, (☞ (in actions of ejectment,) of the two tracts of land in the complainant's bill mentioned, tender the peaceable and quiet possession of the same; but that he, the said Jesse, declined accepting the said possession. He further states that said Jesse admitted to him, that, some short time after entering into the contract for the purchase of said lands, he obtained possession of parts of it, and continued for a time to receive the rents and profits, but, for some time past, he had declined receiving the rents.

On the part of the defendant, it will be contended:

1st. That the complainant contracted for the purchase of the lands in question with a full knowledge of the nature of the defendant's title, and that she was therefore guilty of no fraud.

2d. That, by the terms of the contract, the defendant was not bound to deliver possession to the complainant, of the lands contracted for, before she had received the full amount of the purchase money.

3d. That if the legal title of the lands in question were still outstanding in the heirs of Col. Edward Carrington, deceased, the complainant has not, by tendering the balance of the purchase money, placed himself in an attitude in which he could call upon a court of equity to decree a recession of the contract.

4th. That if the complainant had tendered the balance of the purchase money, and the legal title were still outstanding in the heirs, a court of chancery could not, under the circumstances of this case, decree a recession of the contract.

5th. That the defendant is now invested with a complete title, both legal and equitable, to the lands and premises contracted to be conveyed to the complainant.

THOMAS SCOTT,
for Defendant.

STATE OF OHIO, *Ross county, ss.*

Before me, the undersigned, one of the justices of the peace in and for the township of Scioto, in the county aforesaid, personally appeared Thomas Scott, who, being duly sworn according to law, deposeth and saith that he was of counsel for Eliza J. Carrington in the case stated in the appended printed abstract, made out many years since, pursuant to a rule of the circuit court; and that that printed statement was made out in the identical cause to which this affidavit and printed statement is annexed. He further states, that

a deposition of Walter Dun, and a deposition of him, the said Scott, was read on one of the hearings of said cause, previous to the entering the interlocutory decree, which, by some casualty, has been lost from the files of the said circuit court, and does not now appear, as he believes, in the aforesaid record certified up to the Supreme Court. That the aforesaid printed abstract was made out by this deponent, and that the abstracts in the third column of said printed statement, enclosed in a bracket, thus were taken by him from the depositions which have been lost as aforesaid. And further this deponent saith not.

THOMAS SCOTT.

Sworn and subscribed before me, this 19th January, 1832.

PETER PATTERSON, *J. Peace.*

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SUPREME COURT OF THE UNITED STATES.

No. 89.

THE UNITED STATES, PLAINTIFF,

VERSUS

JOHN B. MILLS.

CERTIFICATE OF DIVISION FROM CIRCUIT COURT U. S. FOR THE DISTRICT OF NORTH CAROLINA.

UNITED STATES OF AMERICA, *North Carolina District, Circuit Court, November Term*, 1832.

Be it remembered, that heretofore, to wit: at a circuit court of the United States of America, begun and held for the District of North Carolina, at the court house in the city of Raleigh, on the 12th day of November, A. D. 1832, and in the fifty seventh year of the Independence of the United States: Present the honorable John Marshall, esquire, Chief Justice of the United States, and the honorable Henry Potter, esquire, district judge for the district of North Carolina.

Beverly Daniel, esquire, marshal for the district aforesaid, returned into court his venire; out of which the following persons were drawn, impanneled, and sworn as grand jurors for this term, viz: John Dunn, Alfred Jones, Henry Cannon, Westly Jones, Kembrough Jones, John Legan, Dasha Shaw, John Lumsden, Sampson Boon, Archibald Holmes, Smith Patterson, Benjamin Waddy, Wm. M Burns, Wm. F. Streedweek, Wm. L. Owen, Samuel Downey, Samuel Smith, and Gurdon Deming; whereupon John Dunn, esq. was appointed foreman thereof, who brought into court a bill of indictment; in words and figures as follows, viz:

UNITED STATES OF AMERICA, *District of North Carolina, Circuit Court, November 12th*, 1832.

The jurors for the United States, in and for the district of North Carolina, upon their oath present, that John B. Mills, late of said district, laborer, did at Fayetteville, in the district aforesaid, on the first day of June, in the year of our Lord one thousand eight hundred and thirty-two, procure, advise, and assist Joseph I. Straughan to secrete, embezzle and destroy a mail of letters with which the said Joseph I. Straughan was entrusted, and which had come

to his possession, and was intended to be conveyed by post from Pittsborough, in the district aforesaid, to Fayetteville, also in said district, containing bank notes; the said Joseph I. Straughan being, at the time of such procuring, advising, and assisting, then and there a person employed in one of the departments of the post office establishment, to wit: a carrier of the mail of the United States from Pittsborough aforesaid to Fayetteville aforesaid, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said John B. Mills afterwards, to wit: on the day and year aforesaid, at Fayetteville, aforesaid, in the district aforesaid, did procure, advise, and assist Joseph I. Straughan to secrete, embezzle, and destroy a letter addressed by Joseph Small to Joseph Baker, with which the said Joseph I. Straughan was entrusted, and which came to his possession and was intended to be conveyed by post from Pittsborough, in the district aforesaid, to Fayetteville, aforesaid, containing sundry bank notes, amounting, in the whole, to sixty dollars, of a discrimination to the jurors, aforesaid, unknown, and of the issue of a bank to the said jurors also unknown, the said Joseph I. Straughan being at the time of such procuring, advising, and assisting, then and there a person employed in one of the departments of the post office establishment, to wit: a carrier of the mail of the United States from Pittsborough, aforesaid, to Fayetteville, aforesaid, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States.

THOMAS P. DEVEREUX,
District Attorney.

Endorsed. A true bill.

JOHN DUNN, *Foreman.*

Whereupon John B. Mills was brought to the bar, formally arraigned, and pleaded not guilty.

UNITED STATES,
vs.
JOHN B. MILLS. } *Indictment—pleads not guilty.*

Whereupon, the following jury being impannelled and sworn to try the issues, &c., viz.

Josiah O. Watson, Joseph Gales, Carney Bynum, Robert Harrison, Alan Temple, Robert H. Hight, William Clark, John M. Allen, Samuel Whitaker, James Cooke, James Litchford, and William Montgomery, find the defendant guilty in manner and form as charged in the bill of indictment.

The defendant, John B. Mills, being brought to the bar, in custody of the marshal, moved, by his counsel, an arrest of judgment.

The defendant, in support of his motion to arrest the judgment upon the verdict of guilty, humbly submits the following reasons:

1st. That the indictment doth not aver, charge, or in any manner show, that the said Joseph I. Straughan did commit the offence to which this defendant is alleged to have procured and advised and assisted him to commit:

2d. That the said indictment is, in other respects, uncertain, insufficient, informal, and defective, and will, in no sort, warrant any judgment upon the said verdict.

THE UNITED STATES,
vs.
JOHN B. MILLS.

The defendant was indicted upon the 24th section of the act of Congress approved the 2d of March, 1825, entitled an act to reduce into one the several acts establishing and regulating the Post Office Department, for advising, procuring, and assisting one Joseph I. Straughan, mail carrier, to rob the mail, and being found guilty, submitted a motion in arrest of judgment; one reason in support of which motion was, that the indictment did not sufficiently show any offence against the said act, because the same did not directly charge, or otherwise aver, that the said Joseph I. Straughan did actually rob the mail, and, upon argument, the judges were opposed in opinion upon this question, to wit: whether an indictment, grounded upon the said statute, for advising, &c. a mail carrier to rob the mail ought to set forth or aver that the said carrier did, in fact, commit the offence of robbing the mail, and, therefore, the judges directed the same to be certified to the Supreme Court.

UNITED STATES OF AMERICA, *North Carolina District, Circuit Court, Fifth Circuit.*

I, William H. Haywood, clerk of the circuit court of the United States for the district aforesaid, do hereby certify the foregoing to be a copy of the proceedings in the indictment against John B. Mills. Given under my hand and seal of office this —— December, A. D. 1832, and in the 27th year of the independence of the United States.

WM. H. HAYWOOD, *Clerk.*